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CURRENT TOPICS

The Rent Act

MR. BROOKE'S speech in the Commons debate on the Rent Act last Monday did nothing to clarify his intentions about the situation which will exist next October. At one point he protested that the Government had no intention of repealing the Act or any part of it and at another reminded landlords of the warning which he had given and which he had no intention of elaborating "at present." The only conclusion to be drawn from these apparently inconsistent observations is that the Government might use powers of compulsory acquisition. While the use of such powers would not involve the repeal of the Rent Act or any part of it, we consider that it would be a very fine distinction. If the Minister has plans other than compulsory purchase we ought to be let into the secret.

More Hedges against Inflation

THE Committee which the LORD CHANCELLOR recently appointed to consider the investment of funds in court has been provided with some interesting data. The Manchester City Council are proposing to invest half a million pounds each year of their superannuation fund in ordinary shares. It is suggested that the holdings should be of £10,000 each and should be spread over fifty companies, including those of companies in the radio, electrical, food and catering, insurance, motor, aircraft, brewing, building and engineering industries. Almost at the same time the Northern Assurance Company, Ltd., announced a further variation on the theme of retirement for the self-employed. This new plan, which to some extent resembles plans of other companies already in existence, is called the Variable Annuity Plan. It has the advantage of taxation relief provided by s. 22 of the Finance Act, 1956, but its benefits are expressed not in pounds but in units. The Fund will be invested almost entirely in ordinary shares and the benefits will be directly related to the market value of the Fund. The Company emphasise that these benefits will be subject to fluctuations in amount such as are unknown in connection with the traditional forms of life annuity and that if there were a major slump in trade there might well be an enormous fall in benefits under the plan. A slump is accompanied by a fall in the cost of living (leaving aside the peculiar conditions which exist in war) and most people would be content to allow the money value of their benefits to rise or fall in sympathy with the cost of living. In any event the Company will require a certain minimum investment in a traditional form of annuity as well. To complete the picture, we record that last week two widows at least had to leave their damages in court, one in the High Court and the other in the county court, at low rates of interest and with no protection against inflation.

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Public Inquiries

WE congratulate the MINISTER OF HOUSING AND LOCAL GOVERNMENT on responding so promptly and generously to some of the Franks Committee's recommendations, although our congratulations on this matter do not diminish our displeasure with him over the Rent Act. The Minister has issued a circular to all local authorities and joint boards and committees (No. 9/58, dated 27th February, 1958) telling them about changes which he is making in the procedure for holding inquiries into compulsory purchase orders, clearance orders and planning appeals. He asks local authorities who are proposing to acquire land compulsorily to prepare a statement in writing setting out clearly the reasons for the proposal and to make this statement available to those affected as early as possible. In planning refusals, the Minister asks planning authorities to make the reasons which they are already required to give in writing full enough to give the applicant adequate understanding of them. The Minister says that it is not enough to say that the development "would be injurious to amenity" or "would be contrary to the provisions of the development plan," without saying what amenity or what provisions of the plan. When an applicant has decided to appeal, these reasons may have to be amplified still further.

Departmental Witnesses

THE two most fundamental changes are, first, that which makes civil servants available as witnesses and liable to be cross-examined except on matters of Ministerial policy and, second, that which states that the letter informing the parties of the Minister's decision will in future state the inspector's findings and his recommendation (if any) and then give the Minister's decision with reasons. In due course a code of procedure at inquiries will be embodied in rules made after consultation with the Council on Tribunals, but already the Government have given us enough on account to make it clear that they are in earnest and that it would be very difficult for any future Government to retract. We are delighted to see from the circular that the Minister has been making efforts to reduce the time taken in reaching his decisions and that those efforts will continue. In our opinion these changes, which are already in operation, make a real contribution to simplifying the processes of administration and thus should strengthen democracy.

A.I.D.

IT is clear from the Lords' debate on artificial insemination that there has been a general retreat from the proposition that it should be a crime, but this leaves us with many difficult problems of which only some are legal. We have no doubt that the LORD CHANCELLOR is right to appoint a departmental committee to inquire and make recommendations. We hope that its terms of reference will be wide.

A Club Appeal

IF magistrates order a club to be struck off the court register "a person aggrieved" by such an order may appeal to quarter sessions. Section 144 (8) of the Licensing Act, 1953, gives a right of appeal where under subs. (4) of the same section a further order is made that "the premises occupied by the club shall not be occupied and used for the purposes of any registered club." The question was raised recently whether the magistrates making such an order could suspend its operation until an appeal had been heard. Few clubs suffer much nowadays from being struck off the register. "The Flying Saucer" becomes "The Revolving Sputnik," a new secretary supersedes the old, another committee is impressed—though this is generally a work of supererogation—and the "customers" have the enjoyment of their old haunt as before. But to disqualify the premises is a very different matter and presumably the summary courts have no power to suspend their order until an appeal has been decided. By s. 28 of the Road Traffic Act, 1956, the disqualification for a driving licence may be suspended pending appeal and an order to destroy a dangerous dog under the Dogs Amendment Act, 1938, is automatically suspended when notice of appeal is given. The omission of a similar provision in the case of club premises may be because our legislators felt that such an order would be made only when the law has been impudently and persistently flouted.

Reports of Preliminary Proceedings

THE Society of Labour Lawyers have boldly submitted, in their written evidence presented on 25th February to the Departmental Committee on Proceedings before Examining Magistrates, that newspaper reports of preliminary investigations should be restricted to the name, address and description of the accused, the charge or charges on which he is committed for trial, the fact that he was so committed, and to which court. Nothing should be published of the speeches of advocates, the evidence, observations from the Bench on the evidence, and whether the accused is on bail or in custody. It should be permissible to publish these matters in full when the trial is concluded and the verdict has been given, and also when an accused is discharged, unless other persons accused with him are committed for trial. This, the Society's memorandum states, would not be a step towards secret trial, and in fact it recommends that all preliminary investigations should take place in public. Alternative proposals put forward by the Society were that evidence objected to in good faith should not be published. Nor should the discussion concerning such evidence. The prosecution's opening statement should not be published; oral and written statements made by the accused to anyone, police officer or civilian, should not be published; and the magistrates should have the power to prohibit publication of the whole or any part of the evidence.

A Tasty Morsel

AS is well known, in *Russell* v. *Russell* [1897] A.C. 395 the House of Lords decided that legal cruelty was conduct of such character as to have caused danger to life, limb or health (bodily or mental) or to give rise to a reasonable apprehension of such danger. Many unsuccessful attempts have been made to bring behaviour which an "injured" party seeking divorce finds merely embarrassing or unpleasant within this definition of cruelty, but we doubt whether even the American courts have been confronted, as was SACHS, J., recently, with the contention that the wife had committed a matrimonial offence by preferring fish and chips and pancakes to native fare while on Continental holidays. On one occasion, it was alleged, she was so insistent on having her favourite food that she called out "Chips, chips, chips." Is it necessary to say that his lordship found the husband's case a little too hard to swallow?

Common Law Commentary

MASTER'S INDEMNITY CLAIM AGAINST SERVANT

A RECENT decision of McNair, J. (*Harvey* v. *R. G. O'Dell, Ltd. and Others* (1958), *The Times*, 19th February), is one which we shall read with interest when it is reported in full. It raises again the question of the right of a master to claim indemnity from his servant where the master has been held vicariously liable for the negligence of the servant which has caused loss or injury to a third party. It will be recalled that the House of Lords in *Lister* v. *Romford Ice and Cold Storage Co., Ltd.* [1957] A.C. 555 debated this question and held, by a majority of three to two, that the master has a right to be indemnified.

The facts were that the defendants, the employers, carried on business as builders and repairers and they had a servant named Galway who had acted as storekeeper. But Galway also occasionally did other work for the firm, and he had a motor-cycle combination which he sometimes used when on the firm's business; he was allowed to charge a sum representing the cost of public transport when using his motor cycle for the firm. On the occasion in question Galway was asked by the firm to do an outside job in company with the plaintiff, and Galway used his motor cycle, taking the plaintiff with him. By his negligent driving Galway met his death and at the same time caused injury to the plaintiff. The action brought in respect of this negligence was brought against the master as being vicariously responsible for his servant's (Galway's) negligence, and the master claimed an indemnity against the administratrix of the estate of Galway.

Time for issue of third-party notice

A number of points arose for decision in regard to the third-party claim. The third-party notice was partly based on the right of a joint tortfeasor to claim contribution but was not issued until nearly three years after the date of the grant of letters of administration, and the question on this fact was whether the notice was out of time having regard to the provisions of s. 1 (3) of the Law Reform (Miscellaneous Provisions) Act, 1934, which lays down that no proceedings shall be maintained unless they ". . . are taken in respect thereof not later than six months after his personal representative took out representation." On this point McNair, J., held that a third-party notice for contribution under the Law Reform (Married Women and Joint Tortfeasors) Act, 1935, was not within the concept "proceedings," so that the six months period did not apply. This ruling seems to be one which treats the word "proceedings" as a more technical expression than the writer would have expected, but his lordship said that the authorities supported the view that such a claim under that Act was *sui generis*.

No extension of servant's duty

On the substantial question whether the claim for indemnity could be supported against the servant's estate, the claim was based both on contract and tort. In contract on the basis that there was an implied duty on the part of the servant to perform his work with care, and in tort on the basis that he owed a duty to the plaintiff to exercise care. His lordship considered *Lister's* case, *supra*, in connection with the claim in contract and held that the claim could not be supported on that ground because he interpreted *Lister's* case as imposing a duty in contract only in connection with the work a man had to do in the post for which he was engaged. Lister was engaged as a driver, but Galway in the instant case was not: he was employed as a storekeeper, and the motor cycle he was driving at the time of the accident was his own motor cycle, the expenses of which he paid himself (although, of course, he claimed the equivalent fare on public transport for the journey).

That is a salutary view since many regard *Lister's* case as going too far—not the least of such persons being two law lords and one lord justice (who, incidentally, is now a law lord). To extend that duty from a servant's normal duty to everything he does in the course of his employment whether usual or exceptional would be to impose too heavy a standard of care.

The claim in tort

On the question whether the claim could be supported in tort, his lordship held that it could, because it has been constantly held that master and servant are joint tortfeasors, and therefore under s. 6 (1) of the Law Reform (Married Women and Joint Tortfeasors) Act, 1935, there was a right of contribution. There was the question whether the deceased, Galway, was a person ". . . who is, or would if sued have been, liable. . . ." His lordship did not think that this meant that he must have been found liable within the six months' period allowed under the 1934 Act, so that the fact that he would not be actually liable until judgment was given in the action on the main claim, and that in this case that did not take place within the six months, did not invalidate the claim. This point was discussed in *George Wimpey & Co., Ltd.* v. *B.O.A.C.* [1955] A.C. 169 but was not decided; but two law lords thought that the words meant "if sued when the cause of action arose" and only one law lord thought that it meant the actual time of the claim.

Is there a future in it?

Notwithstanding that this claim so far as it was based on breach of contractual duty failed, the fact that it was brought and succeeded on another ground is likely to cause some disturbance. *Lister's* case produced many a questioning, public and otherwise; with this further case we may ask whether such claims are likely to become fashionable.

No doubt the servant's liability to indemnify his master can be supported on grounds of logic. It is a principle of law that liability in general depends on fault. It is also a principle that a servant has a duty to exercise skill and care, or at any rate that he can be dismissed without notice if he does not properly "exercise skill and care," and this is permissible on the basis of a breach of an obligation by the servant of a fundamental nature. It is also true that in a claim by *A* against *B* the question whether either party is insured against the loss in question is not normally material.

Social and industrial changes

Nevertheless, it is recognised by the masters of jurisprudence and by all legal thinkers that logic is not enough. For what is logic but pattern? And can the pattern remain stable when the material on which it works is constantly changing? There is a logic of change as well as a logic of stability, and where necessary we abandon one type of logic (or pattern)

for another. In the master-servant relationship two things at least have happened in the past one or two hundred years. Servants are no longer so penniless as never to be worth suing, and further, the number of servants who use mobile power, so often the cause of injury to third parties, has increased enormously under our modern industrial revolution with its lorries, cranes, electric portable power tools and the like. The significance of those two factors is quite distinct. No doubt the first factor helps explain why servants have not in the past been sued for indemnity by their masters, but it is by no means the sole explanation. And it should not be overlooked that as early as 1792 in *Green* v. *New River Co.*, 4 T.R. 589, the possibility of the success of such a claim was conceded. But the modern financial position of many workers is such that these claims may be worthwhile.

But the second factor, coupled with the function of insurance, is a factor against the principle of indemnity. The servant so often causes loss to another because he is using a power tool supplied by his master which would never come into his possession had it not been for the job he was doing for his master. It is in this connection that *Harvey* v. *R. S. O'Dell, Ltd. and Others, supra*, is of interest, because there the servant was driving his own motor cycle. But where a servant is operating his master's machines and he causes a loss because of their use, it can be soundly argued that the right of indemnity should not apply. Whether the master is insured or not, there is much to be said for the view that the master should bear the loss.

That is not to say that the servant should go scot-free. There is, however, still the right of dismissal or demotion. But it would be a simple matter to require the master to insure and bar recourse to the servant. One of the arguments, never answered, in *Lister's* case was that when the insurance company quoted their premium it was not on the basis of a right of indemnity against the servant. At the same time it was said that if the servant is not to be liable he will be more careless. The question is, if servants are to be generally liable, will carelessness decrease, for at the moment they are not usually made liable.

There is room for argument and counter-argument. At the moment neither side seems right. The dissenting judgment of Denning, L.J. (as he then was), in the Court of Appeal has attractions in part, but it is easy to pick holes in it; for that matter the leading speech in the House of Lords of Lord Simonds is not without its flaws. The problem is a very difficult one and we have not heard the last of it.

L. W. M.

A Conveyancer's Diary

ADVANCEMENT: THE LAST WORD?

A FEW weeks ago this Journal announced, with a well-justified note of self-congratulation in its voice, that the views which had been expressed in these pages on the vexed question whether the test of greater hardship had or had not been abolished by the Rent Act, 1957, had found favour with the Court of Appeal. "Floreat 'Greater Hardship'!!" was the heading chosen for this announcement (see p. 111, *ante*). Now year in, year out, over a considerable period, I in this "Diary" have sought to encourage the use of the so-called power of advancement, and as the views which I have expressed have now been confirmed by the decision in *Re Moxon's Will Trusts* [1958] 1 W.L.R. 165, and p. 127, *ante*, a suitable heading for this article would, it might seem, have been "Floreat Advancement." But (and it is an important but) I have always felt that the main obstacle in the way of a much freer use of this power lay in its common name, the "power of advancement." The statutory power conferred by s. 32 of the Trustee Act, 1925, is so called in the marginal note to the section, and writers of books of precedents and of text-books, as well as practitioners, have for so long referred to any power in similar terms to those of the statutory power as a power of advancement, that the fact that such powers can be used for purposes other than what is strictly called advancement tends to be overlooked. And that is a pity, for properly regarded the power can be among the most useful instruments for saving estate duty in existence.

Application for the benefit

The statutory power (let me remind my readers) is a power to "pay or apply any capital money subject to a trust for the advancement or benefit . . . of any person entitled to the capital of the trust property or any share thereof," subject to certain conditions, the most important of which is that the money paid or applied for the advancement or benefit of any person shall not exceed one-half of the share or interest of that person in the trust property. The notes on this power in the established text-books on the subject (Wolstenholme and Cherry, Lewin, Underhill) all concentrate on the word "advancement" and pay little or no attention to the much wider effect of the words "pay or apply . . . money . . . for the . . . benefit . . . of any person." Their effect has been considered in a number of cases. First, in *Re Garrett* [1934] Ch. 477, the proposal was that in exercise of this power capital money should be applied for the education of an infant beneficiary. It was assumed that such application would be for the benefit of the beneficiary; at least, no argument (as the case is reported) was heard in a contrary sense, nor is there any indication in the judgment that the learned judge (Clauson, J.) felt any difficulty on that head. The case is reported, however, on the meaning of certain other words in s. 32 (1), viz., "any person entitled to the capital . . . whether absolutely or contingently on his attaining any specified age or on the occurrence of any other event."

The next decision to be reported was *Re Halsted's Will Trusts* [1937] 2 All E.R. 570, a case on an express power which authorised trustees to advance to a beneficiary a sum "for the purpose of establishing him in business or otherwise for his benefit or advancement in life." Farwell, J., held that a proposal to advance a sum for the purpose of making provision (for the future: the beneficiary was able to support them presently out of his earnings) for the beneficiary's wife and child was a benefit to the beneficiary within this power. This was a useful decision in indicating that powers of this kind had a double aspect: the first is advancement proper, which we all know to be a rather narrow power (the Victorian examples of what is a proper object for the exercise of this power, such as the purchase of a commission in the Army,

readily come to mind, and for a much more modern example of the restricted scope of a power of advancement proper see *Re Williams' Will Trusts* [1953] Ch. 138); the second is "application for the benefit of," a much more useful power. It may be noted that in *Re Halsted*, Farwell, J., read the words of the power disjunctively, and this by itself was enough to knock on the head the argument, which I have sometimes heard, that "benefit" in the phrase "advancement or benefit" connoted only a benefit in the nature of an advancement.

Saving estate duty

Another step forward was taken in *Re Vestey's Settlement* [1951] Ch. 209 and *Re Ropner's Settlement* [1956] 1 W.L.R. 902. In his judgment in the latter case (which arose on the statutory power), Harman, J., said that having regard to the decision in the former case "where it was held to be an application of money merely to set it aside to accumulate for a child's eventual benefit, it must be an application of money to transfer it to trustees of a settlement to be made for a child's benefit, and I do not think that there is any difference, on consideration, in the position of an infant from that of an adult." The object behind the proposed transfers in this case was to save estate duty, and that was held to be a perfectly legitimate consideration.

All these cases were useful in emphasising the non-advancement side of this power, and although none of them was a direct authority for the proposition that a transfer of capital money into the hands of the beneficiary was an application of money for his benefit, many practitioners took the view that this must follow from these decisions and advised their clients accordingly. They were heartened, also, by the open reference in *Re Ropner's Settlement* to the purpose behind the proposals which were there put before the court for consideration. Up till then it was sometimes felt that a proposal involving an expected alleviation of the burden of taxation lacked, if not quite merit, at any rate respectability.

Payment direct to beneficiary

The final step has now been taken in *Re Moxon's Will Trusts*. The beneficiary in question was contingently entitled to an estate of a value of about £55,000. He was over thirty years old, married, with two children. The trustees desired and intended, if they could lawfully do so, to exercise the statutory power by paying a sum of £20,000 to the beneficiary for his own use out of the capital of the estate. The evidence showed (*a*) that the beneficiary did not then require this sum for the purpose of any specific purchase or other expenditure; (*b*) that in the opinion of the trustees he was a responsible and trustworthy person who could be relied upon to deal with the money in the best interests of himself and his family; and (*c*) that the trustees took into account the substantial saving in estate duty which would result if the person entitled to a life interest in the estate should survive the transfer by five years. Danckwerts, J., referred to all these matters in his judgment, and went on to say that, in his judgment, the word "benefit" was the widest possible word one could have, and that it must include a payment direct to the beneficiary. The learned judge added that this did not absolve the trustees from making up their minds whether the payment in the particular manner which they contemplated was for the benefit of the beneficiary.

Exercising the wider power

As to these last words of caution, the power, whether statutory or express, is always a discretionary one and trustees about to exercise it must always satisfy themselves that the circumstances justify their proposed course of action. Subject to that, *Re Moxon's Will Trusts* is clear authority that under this power capital can be taken out of trust and transferred out and out to a responsible, adult beneficiary, to do what he likes with. If the beneficiary is on the young side, say under thirty, and it is desired to exercise the power without delay (as it may often be desired, to start time running for the purposes of s. 43 of the Finance Act, 1940), it is usually possible to set up an *ad hoc* trust to receive the money transferred under the power and hold it in trust for a period. No doubt this decision will give an impetus to transfers of this kind, and in time we shall all become familiar with the machinery which has to be used to effect them, and at the same time keep within the bounds of the power; wide as these have now been declared to be, that should not be difficult. Until then, it is easy enough to take advice. The present graduated rates of estate duty bear so hardly on even moderate estates that beneficiaries are usually only too willing to have advice taken on their behalf, and at their expense, if any substantial saving in this burden can be achieved.

"A B C"

"THE SOLICITORS' JOURNAL," 6th MARCH, 1858

On the 6th March, 1858, The Solicitors' Journal discussed professional remuneration: "There are undoubtedly many clients who pay solicitors' bills of costs without investigation and without repining. But we fear there are many more who vainly endeavour to fathom mysteries which are much too deep for them . . . and who think that their advisers have not earned the money paid to them, and possess not the smallest claim to that gratitude which, in other relations of service, does usually accompany direct remuneration for scientific labour. The reason . . . we take to be, that the most cursory perusal of a solicitor's bill discloses many things done of which the utility is, to say the least, factitious, while the thought, and care, and skill, which are real and valuable, remain unrecorded. The course of cumbrous formalities is traced with so much minuteness, that anyone not an experienced lawyer is tempted to conclude that all legal procedure is an elaborate contrivance for fleecing, with some pretence of decency, every man who is so unlucky as to be compelled to seek the aid of a solicitor. There are, it is true, certain time-honoured phrases which it has been the custom to introduce into bills of costs as a sort of protest against the notion that all the work charged for has been done by the fingers of clerks, and no part by the intelligence of the master. We doubt, however, whether the statement that a conference has been 'long' or that a 'very special' instrument has been 'perused and carefully considered' is likely to carry conviction to the client's mind that he has received the value of his hard cash. If these awkward attempts to assert a principle which ought to be beyond dispute have any effect at all, it can only be to provoke the sarcasms of those whose appreciation of the ludicrous has not been entirely overwhelmed by the gravity of the sum total. The present system of remuneration ensures the unpopularity and damages the character of the profession, while it fails . . . to secure a just recompense for a costly training, a laborious career, and a heavy responsibility . . . The services of a solicitor are necessary to the creation and transmission of wealth; and, therefore, it is consistent with sound economy that he should be adequately rewarded for what he does."

Landlord and Tenant Notebook

INTENTION TO DEMOLISH

IT is, I think, difficult to imagine any sane person forming an intention to demolish premises as an end in itself. And when, in *Craddock* v. *Hampshire County Council* [1958] 1 W.L.R. 202; *ante*, p. 137 (C.A.), a business tenant's application for the grant of a new tenancy under Pt. II of the Landlord and Tenant Act, 1954, was opposed on the ground that the landlords intended to demolish the premises comprised in the holding—·229 acre of land with a cowshed and a Nissen hut, used for the purposes of a motor vehicle repair business—and they (as they admitted) wanted possession in order to add the land to an adjoining smallholding, the county court judge granted the application, holding that the intention to demolish was merely ancillary to the intention to relet for agricultural purposes.

In so deciding, he was, the Court of Appeal held, misguided by *Atkinson* v. *Bettison* [1955] 1 W.L.R. 1127 (C.A.) and had disregarded, or not regarded, *Fisher* v. *Taylors Furnishing Stores, Ltd.* [1956] 2 Q.B. 78 (C.A.).

The tenancy

The respondents to the application had let the premises to the applicant for the term of one year and thereafter from year to year; he had already carried on his business of repairing agricultural and other vehicles there for some fifteen years. One clause in the agreement obliged him, if required by the landlords and the superior landlord, to "remove the buildings." I will later suggest why he was not so required.

The year ran from 29th September or from 1st October, it is difficult to say which; and on 21st March, 1957, the respondents gave the applicant what the headnote calls notice to quit but what was, presumably, a landlord's notice to terminate business tenancy (Form 7) as prescribed under s. 25 of the Landlord and Tenant Act, 1954; Lord Evershed, M.R., in his judgment, called it a notice of determination. The report does not say how para. 3 was filled in; one surmises that it was stated that the landlords would oppose an application for the grant of a new tenancy on the grounds that (*a*) on the termination of the current tenancy they intended to demolish and reconstruct the premises comprised in the holding or a substantial part thereof, and (*b*) that on the termination, etc., they intended to occupy the holding for the purposes of a business to be carried on by them. At all events, when the tenant made application (according to another report, on 27th May, 1957) for the grant of a new tenancy, the respondents gave what is called "notice of objection" (or, according to the other report, served a counter-notice on 6th June) setting out the above intentions. The whole of (*b*), and the "and reconstruct" of (*a*), were subsequently dropped.

Primary purpose

In *Atkinson* v. *Bettison*, *supra*, the landlord, who was not entitled to oppose a grant on the ground that he intended to occupy the holding for the purposes of his own business (s. 30 (1) (*g*)) (being debarred as a recent purchaser: s. 30 (2)), did so intend; and relied on an intention to reconstruct the premises (s. 30 (1) (*f*)). His opposition failed on two grounds: what he proposed doing did not amount to reconstruction of the premises or of a substantial part of the premises; and the reconstruction was not his primary purpose. I do not think that it can be doubted that both considerations were held to be valid; indeed, on the question of "primary purpose" the court applied *J. W. Smart* (*Modern Shoe Repairs*), *Ltd.* v. *Hinckley & Leicestershire Building Society* [1952] 2 All E.R. 846, a decision under the corresponding provisions of the Leasehold Property (Temporary Provisions) Act, 1951.

But in *Fisher* v. *Taylors Furnishing Stores, Ltd.*, *supra* (intention to demolish and reconstruct being the issue), the court expressed its regret that *Atkinson* v. *Bettison* had given rise to difficulties, and explained that the *correct* ground of that decision was that the proposed work was not "substantial"; adding a warning against allowing a landlord too easily to escape the five-year rule (s. 30 (2)) by putting up a case of intention to reconstruct, etc.

Craddock v. *Hampshire County Council* has now definitely laid down that if there is a genuine, firm and settled intention to do some act which will qualify, or help to qualify, the landlord for resisting an application for a new tenancy, it does not matter that that intention is secondary to some intention which would not so qualify or help to qualify him. Nevertheless, the decision suggests some further points for discussion.

"Without obtaining possession"

Whether a landlord's intention be to demolish or to reconstruct the premises comprised in the holding, or to demolish or reconstruct a substantial part of those premises, or to carry out substantial work of construction on the holding or part thereof, s. 30 (1) (*f*) insists that he also establish that "he could not reasonably do so without obtaining possession of the holding." Little has been heard of this part of the paragraph, most of the authorities having been concerned with proposals of a drastic nature. In *Atkinson* v. *Bettison*, it is true, the tenant might possibly have pleaded that the alterations proposed were such that the landlord might have been able to effect them without being given possession of the holding—but the selfsame considerations led to the finding that the landlord did not intend to reconstruct a substantial part of the premises.

In a case of intended demolition, or indeed of intended addition, the position might be different. It was in fact contended in *Craddock* v. *Hampshire County Council* that the premises which the landlords proposed to demolish were not a substantial part of the holding; the argument was rejected, the hut and cowshed taking up too much space for it to be accepted. But one may wonder what would have been the result if the tenant had urged that the demolition of a Nissen hut and a cowshed was work which could reasonably be carried out without possession being given to the landlords? If he had established this point, the opposition could not have succeeded; the question is a hypothetical one, and there would have been no occasion to demonstrate, practically, that the premises could reasonably be demolished, etc.

The same consideration might apply in a case of carrying out some in itself substantial work of construction on the holding, e.g., if the proposal were to add a wing or build an annexe. And as to cases of reconstruction, we have all of us come across notices telling the public "business as usual during alterations."

Frustration

One may also wonder what would have happened if the applicant in *Craddock* v. *Hampshire County Council* had, on receiving the landlord's notice or counter-notice, set about demolishing the hut and shed himself. This is what I had in mind when I suggested that the landlords had had good reason for not calling upon him to effect that demolition, as they might have. For in *Betty's Cafés, Ltd.* v. *Phillips Furnishing Stores, Ltd.* [1957] Ch. 67 it was held (Lord Evershed, M.R., dissenting)—and the decision has since been upheld by the House of Lords, Lord Keith dissenting (*The Times*, 28th February, 1958)—that a landlord relying on s. 30 (1) (*f*) need not intend reconstruction, etc., when notifying opposition, but can establish a correctly predicted intention at the date of the hearing.

It follows, I submit, that it will not suffice for a landlord to prove that he had formed the intention when stating that he would oppose the application on that ground; and that if, when the application comes to be heard, there can be no such intention, the opposition fails.

I do not suggest that a " scorched earth " policy would profit a tenant in any but exceptional circumstances—such as when some flimsy structures, easily replaced when the trouble is over, are the subject of intended demolition. And there is always the possibility of a landlord seeking an injunction to restrain waste or breach or apprehended breach of covenant to deliver up or of the obligation not to alter the thing demised. But how, one may ask, would Equity react to a request on these lines: " Please stop my tenant from pulling down the hut and shed on the holding. True, I want them pulled down, and if he pulled them down and gave up the holding it would save me expense and loss of profit; but if they are not there next week I shall have to grant him a new tenancy " ?

R. B.

HERE AND THERE

SAVE US FROM PRAISE

ONE scarcely knows whether it is a more dreadful fate to have the newspaper world for one's friend or one's foe. As foe it has innumerable ingenious modes of torture at its disposal and it can condemn any reputation to the death of a thousand press-cuttings. But to the sensitive at least it may well seem that a fate worse than that death is in store for those who attract the friendly interest of Fleet Street. It can be particularly embarrassing for members of the legal profession, who, while writhing with revulsion at the ponderously inapt compliments paid to them by some journalist, all uninvited, have a great fear on them that the uncharitable will imagine that they actually like the publicity. The law is emphatically not one of those professions in which any publicity is better than no publicity, if only because all the best paid work (the heavy commercial stuff, patents disputes, revenue litigation) is not the sort of thing that normally makes " news " in the popular sense. To be identified by two or three rather impertinently descriptive personal adjectives tacked on to one's age is among the lesser irritations inherent in getting into the newspaper columns. The observations and forecasts which the journalists obviously regard as complimentary add a profounder horror to public recognition. One rather doubts whether the talented leader whose client was acquitted at the close of the late dramatic Brighton affair flushed with delight at the fervent journalistic prophecy that his future career might match even those of Marshall Hall and Sir Henry Curtis-Bennett. Those two venerable figures of legal fun and folk-lore both had their merits as advocates. But it was not their legal merits which caused their memory to be aureoled by Fleet Street, for which, in their time, they provided so much copy in such a steady stream, and no editor can so much as begin to imagine that any member of the Bar can have any other ambition than to go and do likewise. Let us not give offence by modern parallels, but it is rather as if some article were to praise some brilliant military officer by describing him in an ecstasy of eulogy as another Lord Cardigan, hero of the Charge of the Light Brigade. " Plucky and adventury " Lord Cardigan certainly was and so, in his own way, was Marshall Hall, who, however, was certainly not a great jurist, nor even financially (to apply the other test) a particularly successful advocate.

MISUNDERSTOOD

THROUGHOUT the recent controversy in *The Times* and elsewhere about the intrusive conduct of some newspaper reporters and photographers one suspected an element of cross-purposes. In the first place, Fleet Street cannot really believe that in the age of the common man any well-constituted person can genuinely object to being the hero or heroine of the sort of exhibitionism in which it specialises. In the second place, like a barrister who yields to the temptation to be clever or unkind at the expense of a witness, they feel that it is all for the public good in the long run. Eleven years ago there was a remarkable case of a newspaper photographer who infiltrated himself uninvited into the private wedding reception of a fashionable family and suddenly took a flash-light photograph of the bridal pair. The bridegroom struck him and was subsequently convicted of assault. A periodical used strong language in criticising both the conviction and the photographer. Now, one would have thought that the photographer and his employers would have been content with their victory and let the matter rest, but they were not, and charged headlong into a libel action. Mr. Justice Hilbery's court had nothing in common with the rough and tumble world of the police court and the news room. The news hunting episode was treated with icy disapproval. " It is very difficult," said the judge, " within the limits of judicial decencies to describe conduct of that sort. When the article describes it as 'cowardly and ungentlemanly' those are certainly not words of criticism which overstate the case against such conduct. I do not think it can be too strongly emphasised that in this country the Press has no right to go upon private property or into private places and to intrude upon private people and into private rights, and that the standard of conduct and manners demanded of them is as high a standard as should be demanded of every citizen in a civilised community." Poor Fleet Street! The newspaper must have been as puzzled as, say, Father Christmas would be if he found himself sued for trespass and charged with being found on enclosed premises. The editors obviously see themselves as good fairy godfathers conferring the incomparable boon of publicity on those who sit in darkness. Why, oh why, cannot everyone be as grateful as " pop " singers and " rock 'n' roll " stars?

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of " The Solicitors' Journal "]

" Justice "
(British Section of the International Commission of Jurists)

Sir,—Although you have made a number of helpful references to the work of " Justice " over the past year and a direct appeal has been sent to the majority of solicitors in England and Wales, the response has been very disappointing.

The society, which arose spontaneously through the joint action of the legal societies of the three political parties, and whose council has an equal representation of those parties, is concerned, as your readers know, with the maintenance of the rule of law. Over the past year, it has been able to focus attention and to suggest remedial action on a number of abuses of the rule of law in many parts of the world, but it has been able to carry on its work only under the greatest difficulties.

Its activities, being mainly of a constructive nature, do not bring publicity or command emotional sympathy, and its objects are not among those normally supported by commercial firms and charitable trusts. This means that " Justice " must rely mainly on the support of the legal profession. It is our firm belief that the proper administration of justice and the preservation of fundamental liberties are of vital concern to lawyers, and can best be safeguarded by an all-party organisation.

We have already found that there are many problems needing attention in our colonial territories. We should like to undertake research in this field, and also into a number of aspects of the administration of the law in this country, for example, contempt, State privilege, and abuses of power by administrative and quasi-judicial bodies. We should also like to play our full part as a section of the International Commission in its efforts to promote the concept of the rule of law in those countries which now ignore it. But it will be impossible for us to do these things unless we have greater support, and we earnestly hope that many of our fellow lawyers will respond generously to this appeal.

Membership applications and subscriptions (£1) should be sent to the secretary.

DAVID CAIRNS.
WILLIAM CHARLES CROCKER.
JOHN FOSTER.
EDWIN HERBERT.
NATHAN.
HARTLEY SHAWCROSS (*Chairman*).

1 Mitre Court Buildings,
Temple,
London, E.C.4.

Compensation for Road Injuries

Sir,—There are three short points that I should like to make arising out of Mr. Oerton's letter in [the 1st March] issue. They are :—

(*a*) If Mr. Oerton had confined his opposition to Mr. Pollard's suggestions to the terms of the last paragraph of his letter under review, I should certainly have had a great deal more sympathy for his views.

(*b*) The " complication, subtlety and fine shades of meaning " in which, by implication unwillingly, Mr. Oerton has become enmeshed are of his own contriving.

(*c*) Accepting for one moment that Mr. Oerton's prime purpose in writing to you in the first place was to oppose the admitted injustice of the proposals put forward by Mr. Pollard, is it not to be regretted that he should have introduced a contrary theme which is, in itself, no less unjust, have spent much time in trying to show that he had the law on his side (which he has not !), and then in a final letter in which he bemoans the fact that the primary issue, the absolute liability of a motorist in case of accidents, has become overshadowed devote no less than five-sixths of the available space to pressing his notion that the motorist has a superior right to any other road user, leaving the main issue to the very last as though it were an after-thought.

I can only say that I am utterly unconvinced by either Mr. Pollard or Mr. Oerton The former would make the motorist responsible whatever the cause and the latter goes almost as far in the opposite direction in saying that the unhappy pedestrian has a duty to keep out of the way of a car and is *prima facie* liable if an accident happens. Am I alone in preferring a state of law which, whatever Mr. Oerton says, exists at the present time and puts the liability upon the person who is to blame for an accident ? To depart from this would surely be the negation of justice.

S. P. BEST.

Sturminster Newton,
Dorset.

Sir,—It is evident that for Mr. R. T. Oerton and those who think like him—

> " The good old rule
> Sufficieth them, the simple plan,
> That they should take, who have the power,
> And they should keep who can."

So that if one has enough horse power, one may take the whole road ; and if one can travel along the road in a vehicle without effort, one may keep everybody waiting. Carried to their logical conclusion, Mr. Oerton's views expressed in his last letter to you mean that the driver of any motor-car may take the life of any one who tries to cross his path and the driver of the heavier vehicle may take precedence (and the life) of the driver of a lighter vehicle.

As a cyclist I am often kept waiting five minutes to cross (or turn to the right out of) London streets ! This is in an area where there are traffic lights, Belisha beacons and all the other paraphernalia of built-up areas. Pedestrians (and as has been said every one is a pedestrian sometimes) are in a worse case. How do Mr. Oerton and his followers react, when they are held up in their cars at the junction of a minor road and an arterial one ?

If people would think of their " rights " in terms of their duty to their neighbours, they would soon realise the error in Mr. Oerton's view and the hollowness of his arguments.

MAX C. BATTEN.

London, E.C.4.

Fitting the Crime

Sir,—I was most interested to read in last week's " Here and There " an extract from the doggerel verse an unchaste widow had to recite to the steward of the customary court to be readmitted to her " free " bench.

The remainder of the verse is quoted in vol. III of the 1810 edition of the New Newgate Calendar, which states that the custom existed at East Bourne and West Bourne and also in the Manor of Torre in Devonshire and other parts of the west. The quotation appears at the end of a most spirited declamation against the evils of adultery, in a report of an erring Methodist preacher, the Reverend Mr. Wheatley. The partizanship of the law reporters can hardly be doubted from the following extract which may be of interest to your readers :—

> " . . . Sufficient proof having been adduced, the judge declared the said Wheatley to be a lewd, debauched, incontinent and adulterous man ; and that he had committed the crimes of adultery, fornication, and incontinence, to the great scandal of good men, and pernicious to the example of others. He was then sentenced to do public penance in a linen cloth, in the parish church, with a paper pinned to his breast, denoting his crime ; and condemned to pay the costs of the suit.
>
> If adulterers, in the present times of debauchery, were to be prosecuted to conviction, and this punishment awarded to their sins, our churches would be more numerously attended, less women seduced, and morality again revived . . ."

F. D. N. CAMPAILLA.

London, S.W.7.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

ORDER 14 PROCEDURE: SUFFICIENCY OF AFFIDAVIT SUPPORTING APPLICATION TO SIGN JUDGMENT

Les Fils Dreyfus et Cie Société Anonyme *v.* Clarke

Parker and Sellers, L.JJ. 31st January, 1958

Appeal from Havers, J.

By a specially indorsed writ dated 24th October, 1957, Les Fils Dreyfus et Cie Société Anonyme, a corporation in Switzerland, alleged, first, that on or about 5th December, 1956, Guinness Mahon & Co., a firm of merchant bankers in London, lent to the defendant, Thomas Oliver Neville Clarke, the sum of £10,000 at a stated rate of interest, repayable not later than 30th April, 1957. Secondly, they alleged that on 10th October, 1957, namely, after the sum had become due, Guinness Mahon & Co. assigned the debt to them; and thirdly, that notice of the assignment had been given to the defendant, that he had been called on to pay, but had wrongfully failed and neglected to do so. The plaintiffs claimed in addition to the debt of £10,000, about £195 interest and future interest until payment. The defendant appeared to the writ. On 1st November a summons was issued under R.S.C., Ord. 14, for leave to enter final judgment against the defendant. The matter came before the master supported by an affidavit sworn by a director of the plaintiffs on 31st October in which he said that the defendant was indebted to the plaintiffs in the sum claimed (particulars of which claim appeared by the endorsement on the writ of summons) and that he was so indebted at the commencement of the action. The deponent further stated that it was within his knowledge that the said debt was incurred and was still due and owing. The master gave leave to enter judgment, but on appeal to the judge, Havers, J., held that the court had no jurisdiction to consider the matter because the assignment had not been verified by the plaintiffs' affidavit (or by other affidavits filed subsequently before the master); accordingly, he dismissed the plaintiffs' claim, and they appealed. At the hearing of the appeal it appeared that the original assignment had in fact been put in before the master without objection being taken.

PARKER, L.J., said that the form of the affidavit of 31st October, though proper for a case of a simple debt, was wholly inadequate and defective as a support to an Order 14 summons. The proper way to deal with this case was as set out at p. 246 of the Annual Practice for 1958 in the note headed: "Plaintiff assignee of debt." His lordship then considered whether notwithstanding the defective form the affidavit had sufficiently verified the assignment and he concluded that it had not. That defect had, however, been cured by the production to the master of the original assignment. A further point was whether a proper affidavit was a condition precedent to the issue of a summons under Ord. 14. In *Begg* v. *Cooper* (1878), 40 L.T. 29, it was held, according to the headnote, that it was not essential and that case had never been disapproved. In Wilson's Practice and the Annual Practice (White Book) up to about 1888 that line appeared to have been followed, but Archibald's Practice and the White Book after 1889 indicated that the practice, apparently on instructions given shortly after *Begg* v. *Cooper*, was to require the production of the affidavit before the summons was issued. Thereafter in the Yearly Practice (Red Book) up to 1940 and the Annual Practice up to the current edition *Begg* v. *Cooper* was not acted on. It had not, however, been suggested that defects in the affidavit could not be cured by supplemental affidavits filed after the issue of the summons and *Begg* v. *Cooper* clearly said that they could be cured. The court had jurisdiction to allow the affidavit to be supplemented, and in deciding whether there was jurisdiction to grant leave to enter final judgment regard was to be had at the end of the day to all the affidavits that had been filed. In *Lagos* v. *Grunwaldt* [1910] 1 K.B. 41 and *Symon & Co.* v. *Palmer's Stores* (1903), *Ltd.* [1912] 1 K.B. 259, the defects were not cured. In the present case the court had had jurisdiction to consider the plaintiffs' claim and as on the facts there did not appear to be a *bona fide* triable issue which would have entitled the defendant to unconditional leave to defend, the master's order should be restored.

SELLERS, L.J., agreed. Appeal allowed.

APPEARANCES: *L. G. Scarman*, Q.C., and *C. F. Dehn* (*Rowe and Maw*); *F. W. Beney*, Q.C., *M. G. Polson* and *Ian Kennedy* (*G. F. Wallace & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 300

BANKRUPTCY: CLAIM BY TRUSTEE: PROCEEDINGS UNDER R.S.C., Ord. 52, r. 25, FOR ACCOUNT AGAINST BANKRUPT'S FORMER SOLICITOR: INFORMATION CONCERNING PROPERTY TRANSACTIONS: SUBSEQUENT SUMMONS UNDER BANKRUPTCY ACT, 1914, s. 25: WHETHER *RES JUDICATA*

***In re* A Debtor (No. 472 of 1950); *ex parte* Swirsky**

Jenkins, Romer and Ormerod, L.JJ. 3rd February, 1958

Appeal from Mr. Registrar Bowyer.

A debtor commenced proceedings, which on his subsequent bankruptcy were carried on by his trustee, under R.S.C., Ord. 52, r. 25, for an account against his former solicitor and attorney with the object, *inter alia*, of obtaining information in respect of certain dealings in property carried out by the solicitor as such attorney whilst the debtor was in prison. This information was not forthcoming, whereupon the trustee issued a summons against the solicitor under s. 25 of the Bankruptcy Act, 1914. The registrar refused to set aside the summons as oppressive, frivolous, vexatious and an abuse of the process of the court. The solicitor appealed.

JENKINS, L.J., said that there was a wide difference between proceedings under R.S.C., Ord. 52, r. 25, and proceedings under s. 25 of the Bankruptcy Act, 1914. R.S.C., Ord. 52, r. 25, was concerned with cases where the relationship of solicitor and client existed or had existed and where the client sought an account from his solicitor or former solicitor. The whole object of the rule was directed to providing a summary means of causing solicitors to account for cash and securities in their hands. Section 25 of the Act of 1914, however, was by no means confined to persons who were accountable to the trustee in bankruptcy through their relationship with the debtor; the section covered cases in which it appeared that the person proposed to be examined was in a position to give information which was material for the purpose of getting in the debtor's estate and winding it up. Refusal of a claim against a solicitor for an account based on the relationship of solicitor and client which existed between a debtor and the solicitor concerned would not necessarily preclude the trustee from having recourse to the provisions of s. 25 with respect to the same individual if the court had solid ground for the opinion that that individual was in a position to provide material information in regard to the bankrupt's affairs. As to the contentions put forward on behalf of the appellant, he (his lordship) could not see that the doctrine of *res judicata*, on the facts and circumstances of the present case, prevented the trustee from availing himself of s. 25 of the Bankruptcy Act, 1914. Further, the s. 25 proceedings did not constitute an abuse of the process of the court. In his (his lordship's) view, cases such as *In re North Australian Territory Co.* (1880), 45 Ch. D. 87, and *In re Metropolitan Bank* (1880), 15 Ch. D. 139, were distinguishable. As to the allegation of oppression, the appellant from first to last knew what was expected of him and he chose not to give the information sought, and so now he found himself faced with the prospect of an examination under s. 25 which, if he had carried out his plain duty, would have been averted. The appeal failed and should be dismissed.

ROMER and ORMEROD, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *Neil McKinnon*, Q.C., and *M. O'C. Stranders* (*Bell & Ackroyd*); *Muir Hunter* (*Tarry, Sherlock & King*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [1 W.L.R. 283

HUSBAND AND WIFE: ADVANCEMENT: PURCHASE OF MATRIMONIAL HOME

Silver *v.* Silver

Lord Evershed, M.R., Parker and Sellers, L.JJ. 5th February, 1958

Appeal from Bournemouth County Court.

A husband and wife had purchased successively four dwelling-houses for use as their matrimonial home. In each case, the property had been purchased in the name of the wife and in each case the purchase had been financed by building society mortgages, the instalments payable thereunder being paid as to their entirety by the husband. On the sale of the earlier purchased premises substantial profits had been realised which in part had been used to finance the next purchase and in part had been paid to the wife. After the last dwelling-house was purchased in the wife's name and when £1,300 remained unpaid on the building society's mortgage, the husband left the wife and he applied under s. 17 of the Married Women's Property Act, 1882, for an order that the house was held by the wife upon trust for herself and himself jointly. The county court judge held that there was nothing in the evidence to rebut the equitable presumption that in having the house purchased in his wife's name and in paying the instalments due under the mortgage, the husband intended to make an advancement and the wife was not a trustee of the house in whole or in part for the husband. The husband appealed.

LORD EVERSHED, M.R., said that in cases of this kind where the court was concerned with the matrimonial home, there was an obvious temptation to hold that a fair result would be to say that it was a joint enterprise and the two should be jointly entitled; but, if the court so concluded in this case, he had come to the conclusion that the court would be in effect inventing a case. The material before them in the way of the record of evidence was extremely slender. Unfortunately the judge was not even invited to look at the note taken of his reasons for judgment, and upon such note as the court had it would be usurping the functions which more properly belonged to the trial judge for the court to say that he should have found facts which he did not find. Indeed, he (his lordship) felt that if in this case the Court of Appeal were to say that equity favoured equality, the court would determine by anticipation that nearly all cases relating to the matrimonial home should likewise follow suit. He did not think that would be right. The judge did not find on the material before him sufficient to justify that conclusion, and he thought that, following the principles which still applied and having regard to the fact that the house was in the wife's name, he should treat the case as one in which the husband had not rebutted the presumption that arose from his having paid in the wife's favour all these instalments. He (his lordship) agreed with that conclusion. Accordingly, he would dismiss the appeal.

PARKER and SELLERS, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *Michael King* (*Sharpe, Pritchard & Co.*, for *Andrews, Wetherall, McQueen & Co.*, Bournemouth); *T. R. Crawford* (*Peacock & Goddard*, for *Trevanion, Curtis and Walker*, Bournemouth).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[1 W.L.R. 259**

COUNTY COURT COSTS: CLAIM FOR UNLIQUIDATED DAMAGES: PAYMENT INTO COURT BY DEFENDANTS WITHIN EIGHT DAYS

Reid *v.* Thomas Bolton & Sons, Ltd.

Lord Denning, Hodson and Pearce, L.JJ.

5th February, 1958

Appeal from St. Helens and Widnes County Court.

Order 11, r. 1, of the County Court Rules, 1936, as amended by the County Court (Amendment) Rules, 1957, provides: "(1) Where the only relief claimed in an action is the payment of money, the defendant may, within eight days of the service of the summons on him . . . pay into court in satisfaction of the claim . . . (*b*) so much of the claim as he admits to be due from him to the plaintiff, together with the costs (including court fees) which would be entered on a summons for that amount under Pt. I of App. D." Appendix D sets out under the heading of "Fixed Costs" tables which "show the amount to be entered on the summons in respect of solicitor's charges—(*a*) in an action for the recovery of a sum of money for the purposes only of Ord. 11, r. 1, and Pt. II of this Appendix." A plaintiff issued a summons in the county court, claiming damages from his employers for personal injuries suffered in the course of his employment as a result of their alleged negligence. Before issuing the summons he had incurred costs for doctors' and counsel's fees and other charges. His summons claimed damages (as set out in the attached particulars) for a sum not exceeding £400; and the court officers inserted on the summons an amount of £7 for court fees and solicitor's charges. Within eight days of service of the summons the defendants paid into court the sum of £91 5s., plus the amount of fixed costs marked on the summons. The plaintiff accepted the sum in full settlement of his claim, and thereafter applied to the registrar for the taxation of his costs. The registrar allowed taxed costs of £24 1s. 6d. The employers appealed, contending that on the true construction of the County Court Rules they were liable only for the fixed costs marked on the summons, and the county court judge allowed the appeal. The plaintiff appealed.

LORD DENNING said that the question raised was as to what was the proper practice in the county court. When the court officers were presented with particulars of a claim for personal injuries, were they to put in the appropriate "fixed costs," or "costs to be taxed"? It all depended on whether an action for damages for personal injuries was an action for "the recovery of a sum of money" within App. D of the County Court Rules, 1936, dealing with fixed costs, or, put in other words, was the only relief claimed "the payment of money" within Ord. 11, r. 1? In his lordship's view, this action was an action for the recovery of a sum of money, in which the only relief claimed was a sum of money. Therefore it came within the rule as to fixed costs, and the proper course was for the fixed costs to be entered by the county court officers in the summons. If the defendant paid in a proper sum within the stated period plus those fixed costs, and the plaintiff accepted the sum paid in, those were the only costs recoverable, and the action was at an end. The convenience of the system might outweigh the apparent injustice of the result. The appeal should be dismissed.

HODSON, L.J., concurring, said that he saw nothing in the other rules in the context of which this rule appeared to displace the *prima facie* meaning of the word "money."

PEARCE, L.J., also concurring, doubted whether plaintiffs as a class lost by the rule as the court construed it. It gave an incentive and an impulse to defendants to dispose of an action at an early stage by a sufficiently generous payment in, and worked to keep down the costs and to bring about a speedy settlement. Appeal dismissed.

APPEARANCES: *Norman Brodrick* (*Mawby, Barrie & Letts*, for *Silverman & Livermore*, Liverpool); *Montague L. Berryman*, Q.C., and *Raymond I. Kidwell* (*Gardiner & Co.*, for *Barrell & Co.*, Liverpool).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 266**

RENT RESTRICTION: "GREATER HARDSHIP"

Piper *v.* Harvey

Lord Denning, Hodson and Pearce, L.JJ.

6th February, 1958

Appeal from Southend County Court.

In 1951 a landlord purchased a bungalow subject to the Rent Restriction Acts, hoping to obtain possession of it as a residence for himself and his invalid wife. Being a landlord by recent purchase, he was unable to apply for possession until after the coming into force of the Rent Act, 1957, which by amending provisions enabled a landlord who had purchased a dwelling-house before 7th November, 1956, to apply to the court for possession. In the county court it was submitted for the landlord that the repeal and replacement of para. (*h*) of Sched. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, by para. 21 of Sched. VI to the Rent Act, 1957, had effected the repeal of the proviso preventing the making of an order under para. (*h*) if the court is satisfied in the circumstances that greater hardship would be caused by granting the order than by refusing to grant it. By the evidence the landlord showed that he and his wife lived in one room in difficult conditions which gravely affected her health. The tenant, on whom lay the burden of proving greater hardship, did not

show that he had made any strenuous efforts to obtain other accommodation.

LORD DENNING said that counsel for the landlord had submitted that as a result of the amending Act of 1957 it was enough if the landlord proved that he wanted the premises for occupation as a residence for himself, since the effect of para. 21 of Sched. VI to the Act of 1957 was to replace para. (*h*) in Sched. I to the Act of 1933 and to omit the proviso about greater hardship. He had referred the court to the past history of this legislation, the way in which amendments had been made, and the punctuation, and had told the court that there had been decisions of county court judges each way on the matter. His lordship was satisfied that the provisions about greater hardship still applied. Paragraph 21 simply inserted, instead of the old para. (*h*), the new words there set out and did nothing more than alter the date about the landlord's purchase of the property. The proviso about greater hardship was not a proviso included in para. (*h*) but a proviso to the whole schedule, and as such it was still intact. On the finding of the judge on the facts, however, his lordship thought that on all the evidence there was only one reasonable conclusion to be arrived at, and that was that the tenant (on whom lay the burden to prove) did not prove the case of greater hardship. The appeal should be allowed and judgment be given for the landlord for possession.

HODSON, L.J., concurring, said that though the date could easily have been altered without substituting an entirely new proviso, he was of opinion that the words of para. 21 were so clear that it was impossible to say that the proviso had gone.

PEARCE, L.J., agreed. Appeal allowed.

APPEARANCES: *A. E. Holdsworth* (*Daybell, Court-Cooper & Co.*, Ilford); *Mark B. Smith* (*Gibson & Weldon*, for *H. Maxwell Lewis*, Southend-on-Sea).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 408**

TOWN AND COUNTRY PLANNING ACT, 1947: PERMISSION TO DEVELOP: PRIVATE ACT OF PARLIAMENT: VALIDITY OF CONDITIONS: REMEDY BY DECLARATION NOT OUSTED

Pyx Granite Co., Ltd. *v.* Ministry of Housing and Local Government and Another

Lord Denning, Hodson and Morris, L.JJ.

7th February, 1958

Appeal from Lloyd-Jacob, J.

A private Act of Parliament, the Malvern Hills Act, 1924, promoted to preserve the amenities of the hills against depredations by quarrying, provided by s. 54 that "for the protection" of the plaintiff company (which carried on extensive quarrying operations in the area affected by the Act, both on their own freehold and over licensed land) "the following provisions shall unless otherwise agreed in writing between the company, the conservators and the Malvern Council have effect (that is to say): The heads of agreement as set forth in the Fourth Schedule to this Act are hereby confirmed and made binding" on the parties "and the provisions of this Act shall only apply to and affect the undertaking property or rights of the company subject to the provisions of the said heads of agreement." The heads of agreement were incorporated, with some variation, in a deed executed in December, 1925, after the passing of the Act. Under the deed the company gave up their rights to quarry many acres of the licensed land in return for a promise by the conservators that the company's rights to quarry on their freehold land and on some 23 acres of licensed land should remain undisturbed. The Town and Country Planning General Development Order, 1950, made under the Town and Country Planning Act, 1947, provides so far as material (by art. 3 (1) read with Class XII of the First Schedule to the Order), that "development authorised by any local or private Act of Parliament" may be undertaken without permission. By these proceedings the company claimed declarations that the development which they proposed to carry out on their freehold and licensed land was "authorised" by the Malvern Hills Act, 1924, and that accordingly two ministerial decisions, in 1949 and 1953, refusing them permission in respect of part of their proposed development and granting permission subject to certain conditions in relation to other parts of their operations were of no effect; and, further, that the conditions imposed by the Minister, exercising his powers under s. 14 of the Act of 1947, were invalid, as restrictions on the continuance of an existing use, which could be imposed only under s. 26 of the Act of 1947 with compensation as provided by s. 27 of that Act. The defendants raised preliminary objections that the court had no jurisdiction to grant the declarations asked for, since (*a*) by the combined effect of ss. 15 and 17 of the Act of 1947 the decision of the Minister on an application to determine whether permission was required "shall be final" and the only method of determining such a question was that provided by s. 17 (1) (whereby a person "may . . . apply" to the local authority to determine it); and (*b*) the wide discretion conferred by s. 14 on the Minister to impose conditions disentitled the company from coming to the court for a declaration that the conditions were invalid. Lloyd-Jacob, J., granted the declarations, and the Minister and the council appealed.

LORD DENNING said that in his view the preliminary objection failed, for he found nothing in the Act of 1947 to bar recourse to a declaration. Section 17 was, no doubt, a convenient remedy. But it was not the only remedy. It said that "he may . . . apply" not that he *must* do so. The proposed work might be of such importance that the developer might desire the ruling of the High Court before starting on it, and nothing in the Act barred such a course. The first substantial question, whether the company had to obtain permission of the planning authority before breaking fresh surface, depended on the true effect of the Act of 1924. The company said that its development was authorised by virtue of s. 54. The Minister disputed it. It looked as if the provisions of the heads of agreement had been authorised by the Act; but *R.* v. *Midland Railway* (1887), 19 Q.B.D. 540, threw a different light on the problem and showed that Parliament could give validity to the provisions of an agreement not yet formally completed in two ways. It could make the provisions *as binding as a contract*, or *as binding as a statute*. In this case the development of these quarryable areas was authorised by the agreement of December, 1925, but not by the Act of Parliament. It did not come, therefore, within Class XII of Sched. I to the Order of 1950, but needed the special permission of the local planning authority or the Minister. As to the conditions imposed, if the question of their validity depended on the general words of s. 14 (1) of the Act of 1947 there might be a doubt; but the special words of s. 14 (2) seemed to his lordship to cover this case. The conditions could properly be regarded as expedient "in connection with" the permitted development; they were fair and reasonable; and though there was no technical barrier to the granting of declarations, the company had not here succeeded in establishing a case for them. The appeal should be allowed.

HODSON, L.J., dissenting on the preliminary objection, said that in his opinion the Legislature had by s. 17 given exclusive jurisdiction to the local authority and the Minister, and the court could not be asked to make the declaration sought. The principles laid down in *Barraclough* v. *Brown* [1897] A.C. 615 were applicable. The statute considered in that case used the same permissive word "may" as in the Act under consideration here. As to whether or not the company were authorised by the Malvern Hills Act, 1924, nothing in that Act specifically authorised the company to do anything. Authorisation involved the need for sanction, and the fact that the company's agreement with other parties had been embodied in an Act of Parliament did not amount to authorisation. As to the conditions, it would be impossible to mutilate the Minister's decision by removing one or more conditions. Permission had been given subject to those conditions, and it would not be open to the court to leave the permission standing shorn of its conditions, or any of them.

MORRIS, L.J., dissenting on the substantial question, said that Parliament, by s. 54 of the Malvern Hills Act, had given formal approval and sanction to the activities of the company as planned and arranged within the scope of the agreement that was made. In that way the activities of the company which constituted "development" were, in a very real sense, "authorised" by the Act of 1924. On the appellants' preliminary objection, his lordship did not consider that there was in the Act of 1947, s. 17, any withdrawal or negation of the right to come to the court for a declaration. Appeal allowed. Leave to appeal to the House of Lords.

APPEARANCES: *G. D. Squibb*, Q.C., *Rodger Winn* and *Andrew P. Leggatt* (*Solicitor, Ministry of Health*, for *Ministry of Housing and Local Government*, and *Sharpe, Pritchard & Co.*, for *William R. Scurfield, Worcestershire County Council*); *J. Ramsay Willis*, Q.C., and *William Scrivens* (*Stephenson, Harwood & Tatham*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 371**

RENT RESTRICTION: ASCERTAINMENT OF RATEABLE VALUE

Holland *v.* Ong

Hodson and Pearce, L.JJ., and Upjohn, J. 17th February, 1958

Appeal from West London County Court.

Property in London, consisting of an unfurnished flat and a garage, had formerly been assessed for rating as one hereditament at £76. The tenant, who occupied only the flat, made a proposal for separate valuations of the flat and garage, and pursuant to s. 40 of the Local Government Act, 1948, the local valuation court altered the valuation list by assessing the flat and garage as separate hereditaments, the flat being valued at £40 net, which would keep the flat within the control of the Rent Act, 1957. The landlord applied to the county court for an apportionment of the rateable value of the flat under para. 1 (*b*) of Sched. V to the Act of 1957. The tenant opposed the application, and the judge dismissed it, holding that the apportionment by the local valuation court, on the proposal by the tenant, was an alteration " so as to vary " the rateable value of a hereditament within para. 2 (1) of Sched. V, and that there was, therefore, no jurisdiction to apportion. The landlord appealed.

HODSON, L.J., said that the question to be determined depended on the terms of paras. 1 and 2 of Sched. V to the Rent Act, 1957. If para. 2 (1) was applicable, the tenant was right in his application that the rateable value of the flat was £40 and did not fall to be ascertained by apportionment of the £76. No doubt para. 2 (1) was primarily directed to a straightforward case of the variation of the value originally appearing in the valuation list attached to the description of a particular hereditament. In this case it would be primarily directed to a variation of the original figure of £76 to some other figure. The question was whether the language of the sub-paragraph was apt to embrace the splitting operation which had here occurred. The flat in question fulfilled the definition of " hereditament " in s. 68 of the Rating and Valuation Act, 1925. But to fulfil the definition was not enough, for, that the paragraph might operate, the flat must be a hereditament shown in the valuation list. What was shown in the valuation list before alteration was the flat plus garage, and it was not until after alteration that the flat was separately shown. The question was: Could the flat be said to be shown in the valuation list when it was shown not as a separate entity, but as part of a composite hereditament? It was part of a larger hereditament, and although its rateable value was not actually shown and would, therefore, only be ascertained by apportionment, it could properly be said to be shown without unduly straining the language of the section. Therefore, alteration of the assessment of the premises as a whole from £76 to two separate assessments for the flat and the garage could fairly be regarded as by itself an alteration varying the rateable value of the hereditament.

PEARCE, L.J., and UPJOHN, J., agreed. Appeal dismissed. Leave to appeal refused.

APPEARANCES: *R. E. Megarry*, Q.C., and *A. P. Graham-Dixon* (*Bircham & Co.*); *Roy Wilson*, Q.C., and *Maurice Ahern* (*Ouvry & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 448**

Chancery Division

COMPANY: DIRECTION IN WILL TO TRANSFER COMPANY'S OWN SHARES TO COMPANY: PROPOSED TRANSFER TO NOMINEES

***In re* Castiglione's Will Trusts; Hunter *v.* Mackenzie and Others**

Danckwerts, J. 11th February, 1958

Adjourned summons.

A testator directed that 1,000 ordinary shares in C. E. & Co., Ltd., should be held on trust for his son for life, and if the son should die without issue the trustees of the will were to " transfer them to C. E. & Co., Ltd., at the date of his death." There were certain restrictions on the transfer of shares in the articles of the company. On the death of the son without issue, the court was asked to determine whether the shares should be transferred to nominees of the company (one of whom was qualified under the articles while the other was not), or whether they fell into the testator's residuary estate.

DANCKWERTS, J., said that the principle established by the cases was well known, namely, that a company might not traffic in its own shares, which he (his lordship) took to mean that a company might not buy its own shares. The question was whether there was anything in that principle which would be offended by the direction of the present will. In *Cree* v. *Somervail* (1879), 4 App. Cas. 648, and *Kirby* v. *Wilkins* [1929] 2 Ch. 444, there were statements which indicated that a gift to a company of shares in the company itself did not offend against any rule of law. On the other hand, Simonds, J., in *In re Buckingham* (1944), 170 L.T. 53, had made statements in which he did not altogether seem to accept the principles laid down in those cases. However, when one read the whole of that passage, Simonds, J., seemed to have had some doubt about it, and he did not really advance the matter any further, but merely left it open. It was plain from *Kirby* v. *Wilkins* that there could be a trust under which certain persons on the share register of a company might hold the shares upon trust for the company beneficially. He thought that the person who was entitled to the benefit of the shares was entitled to direct that the shares should not be transferred to him directly but to any person whom he should name. In this case, of the two persons named, Turner and Macrae, Turner was a member of the company and Macrae was not. This being a private company there were restrictions on the transfer of shares in the company's articles of association, but it appeared from the articles that the shares might be transferred to any member of the company. Accordingly, there appeared to be no objection to a transfer into the name of Turner being directed by the company, though there might be an objection to a transfer into that of Macrae. The company was accordingly entitled to demand a transfer of the shares into the names of nominees properly qualified in accordance with the articles of association of the company.

APPEARANCES: *Raymond Walton* (*W. E. Wise & Son*); *James FitzHugh* (*Rising & Ravenscroft*, for *Bernard Kuit, Steinart and Ashby*, Manchester, and *Vivash Robinson & Co.*, for *Harold G. Walker*, Bournemouth); *E. J. A. Freeman* (*Linklaters & Paines*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 400**

WILL: FORFEITURE CLAUSE: ORDER SECURING MAINTENANCE ON PROTECTED INTEREST

***In re* Richardson's Will Trusts; Public Trustee *v.* Llewellyn Evans' Trustee**

Danckwerts, J. 12th February, 1958

Adjourned summons.

A testator bequeathed to his grandson, who later became bankrupt, a protected interest in a settled legacy under which he was entitled to the income during his life and until he attained the age of thirty-five years, when the interest became absolute, provided that he had not " attempted to do or suffer any act or thing or any event has happened . . . whereby he would then or at any time thereafter be deprived of the right to receive the capital or income or any part thereof . . . " but that " if he has made such attempt or sufferance or such event has happened " then the trustees were to hold the income thereof on protective trusts for his benefit during his life in accordance with s. 33 of the Trustee Act, 1925. On the petition of the bankrupt's wife a decree absolute of divorce was made against him on 15th November, 1954; and by an order of the Divorce Division, dated 3rd June, 1955, an annual payment of £50 for her benefit was charged on his interest under his grandfather's will and it was ordered that " the deed necessary to give effect to the said charge be settled by conveyancing counsel of the court." No such deed was ever executed. On 24th October, 1955, the grandson attained the age of thirty-five years; he was adjudicated bankrupt on 27th August, 1956. This summons was taken out to determine the effect of the order of 1955 on the bankrupt's protected interest under the will. His trustee in bankruptcy contended that the order did not create a forfeiture of that interest.

DANCKWERTS, J., said that he was satisfied on three decisions that clearly the effect of that order in itself was to create an equitable charge upon the bankrupt's interest, if that were possible, under his grandfather's will. The cases in question were *Waterhouse* v. *Waterhouse* [1893] P. 284; *Maclurcan* v. *Maclurcan* (1897), 77 L.T. 474; and *Hyde* v. *Hyde* [1948] P. 198; 64 T.L.R. 105. When this order was made, if the bankrupt

had been absolutely entitled, he would have been deprived of the right to receive part of the income, because £50 a year of the income was to be payable to his former wife. Consequently, there was a forfeiture at that date; but in any case under the express terms of the will he never succeeded in attaining his absolute interest, and the protective trusts which were to take effect during the rest of his life in accordance with s. 33 of the Trustee Act, 1925, came into effect. He would make a declaration that by reason of the order of 1955 the life-interest of the bankrupt under the terms of the testator's will was determined, and that he did not become entitled to an absolute interest upon attaining the age of thirty-five years, and that on the true construction of the will, and in the events which had happened during the bankrupt's life, the plaintiff held the property during the rest of the bankrupt's life and the income thereof upon the discretionary trusts laid down in s. 33 (1) (*i*) of the Act of 1925, and after his death, as to the capital and income thereof on the trusts in the testator's will, expressed then to take effect if the protective trusts for his benefit after his attaining the age of thirty-five years should come into operation.

APPEARANCES: *Andrew Goodall* (*Joynson-Hicks & Co.*, for *Turner, Turner & Sheldon*, Torquay); *P. S. A. Rossdale* (*Tarry, Sherlock & King*); *A. C. Sparrow* (*Kingsford, Dorman & Co.*, for *Williamson & Barnes*, Deal).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 414**

ESTATE DUTY: BEQUEST TO TRUSTEE FOR LIFE OF INCOME "... SO LONG AS HE SHALL ACT AS ... TRUSTEE ... BY WAY OF REMUNERATION": WHETHER EXEMPTED

Public Trustee *v.* Inland Revenue Commissioners

Danckwerts, J. 13th February, 1958

Adjourned summons.

A testator gave to one of the trustees of his will the income from certain shares of his residuary estate "during his life so long as he shall act as executor and trustee of this my will by way of remuneration for so doing ..." On the death of the trustee, the Inland Revenue Commissioners claimed estate duty under s. 1 of the Finance Act, 1894, as property passing on the death, on the share of capital corresponding to the share of income to which the trustee had been entitled immediately before his death. The claim was resisted on the ground that the interest was enjoyed by the trustee "only ... as holder of an office," and it therefore came within the exemption from duty in s. 2 (1) (*b*) of the Act. It was contended for the Crown that ss. 1 and 2 were mutually exclusive, and the exemption from duty in s. 2 did not apply to s. 1; and also that the income was not received by the trustee "only ... as holder of an office," but as a personal benefit, in view of the testator's reference in his will to his confidence in the trustee's business capacity and fairness and integrity.

DANCKWERTS, J., said that the relationship of ss. 1 and 2 of the Finance Act, 1894, had been the subject of discussions in a number of cases in the Court of Appeal and the House of Lords. The view that ss. 1 and 2 were mutually exclusive had been based on the remarks of Lord Macnaghten in *Earl Cowley* v. *Inland Revenue Commissioners* [1899] A.C. 198. His lordship referred to *A.-G.* v. *Milne* [1914] A.C. 765 and *Sanderson* v. *Inland Revenue Commissioners* [1956] A.C. 491, and said that from the cases which he had mentioned the following propositions were deducible: (i) Section 1 of the Finance Act, 1894, was the charging section, and if a case fell within the terms of that section, it was unnecessary to refer to the including or extending provisions of s. 2. (ii) None the less the restricting or excluding provisions to be found in subss. (2) and (3) of s. 2 did affect cases which fell within s. 1. So that foreign property in appropriate cases, and trust property (unless chargeable as a gift), which did pass on a death were excluded from the charge of s. 1. The question remained whether the excluding provision in s. 2 (1) (*b*) was capable of application where property passed within the unextended or natural meaning of s. 1 of the Act. Section 2 (1) (*b*) was saying that the situation there mentioned should be included in the ambit of the tax, but not so as to bring in cases which were then mentioned. It was not a general provision excluding from liability those cases from the ambit of the Act; it was an exclusion from the extended and artificially included case of certain things to which that artificial provision would otherwise be applicable. On a further point his lordship said that although the testator's appreciation of the qualities of the trustee was no doubt why he was selected as trustee, as he was only to receive this income so long as he acted as trustee and by way of remuneration for so doing, it could not be claimed that he had not received the income from these shares "only ... as holder of an office." Further, it appeared that the position of a trustee was an "office" within the meaning of s. 2 (1) (*b*) of the Act. On this point the Crown's arguments failed, but on the question asked by the summons he would declare that the claim to estate duty was correct.

APPEARANCES: *John Pennycuick*, Q.C., and *J. A. Wolfe* (*Russell & Arnholz*); *Sir Lynn Ungoed-Thomas*, Q.C., and *E. Blanshard Stamp* (*Solicitor, Inland Revenue*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 429**

Queen's Bench Division

SALE OF GOODS: F.O.B. CONTRACT: SHIPMENT PERIOD: PAYMENT BY IRREVOCABLE CREDIT: DATE WHEN CREDIT TO BE OPENED

Ian Stach, Ltd. *v.* Baker Bosley, Ltd.

Diplock, J. 4th February, 1958

Action.

On 10th July, 1956, the plaintiffs contracted to sell the defendants 500 metric tons of ship plates of Western German origin at the price of 205 dollars per metric ton, to be delivered f.o.b. Benelux port (probably Amsterdam or Rotterdam) for shipment to Canada, August/September, 1956. Payment was to be by confirmed irrevocable credit, divisible and transferable and assignable to the plaintiffs' agents in Western Germany. The buyers were responsible for shipping arrangements and for choosing the exact shipment date. At the same time the plaintiffs (who were not manufacturers) entered into a contract with their suppliers to buy a quantity of ship plates of which the 500 they had contracted to sell the defendants formed a part. The defendants failed to open the credit before the shipment period began or on 8th August, on which date the plaintiffs called upon them to do so "immediately" or thereafter, with the result that on 14th September the plaintiffs, after consultations with the defendants, sold the goods elsewhere, but at a price lower than the contract price. In this action they sued the defendants for damages based on the difference between the market price and the contract price.

DIPLOCK, J., said that the final contract became a classic f.o.b. contract in which the buyer had the right and the responsibility of selecting the port, choosing the date of shipment and making shipping arrangements. A letter of confirmed credit constituted a direct undertaking by a banker that the seller, if he presented the documents as required, would receive payment, and where there was provision under a contract that a confirmed credit should be provided, that undertaking from the banker should be obtained before the seller embarked upon the operations which led directly to the performance of his obligations under the contract. There was clear authority binding upon him that in c.i.f. contracts the confirmed credit must be opened at the latest by the beginning of the shipment period: *Pavia and Co. S.P.A.* v. *Thurmann-Nielsen* [1952] 2 Q.B. 84. In the authorities cited concerning f.o.b. contracts, it seemed to have been either held or assumed that a credit had to be opened at the latest by the shipment date, but none of them concerned a classic f.o.b. contract such as the present. It had been urged on behalf of the defendants that the time at which the credit must be opened was a reasonable time before the shipping instructions took effect, but it seemed to him that the rival contention put by the plaintiffs, that the credit should be opened at the latest by the earliest shipping date, was the sensible one, and accordingly it was the one he held was good law. It was quite apparent from the correspondence and the conduct of the parties in the present case that it was their view that that was what the contract required. Where there was a string of contracts, all of which were financed by a credit opened by the ultimate user, the business sense of the arrangement required that by the time the shipping period started each of the sellers should receive the assurance from the banker that if he performed his part of the contract he would receive payment. In a case of this kind, therefore, and in an ordinary f.o.b. contract

financed by a confirmed banker's credit, the *prima facie* rule was that the credit must be opened at the latest by the earliest shipment date. In that way one got certainty into what was a very common commercial contract. The alternative led to uncertainty which he would be reluctant to import into any commercial contract. He held, therefore, that under this contract it was the duty of the defendants to open their letter of credit by 1st August, 1956, at the latest. The plaintiffs had, however, waived that condition until such time after 8th August as could be called "immediately," but that time had expired by 14th August, on which date they had accepted the defendants' breach as a repudiation of the contract as they were entitled to do and were entitled to damages in the sum claimed. Judgment for the plaintiffs.

APPEARANCES: *Michael Kerr* (*Matthew Trackman, Lifton and Cunnington*); *Neil Lawson*, Q.C., and *John Lloyd-Eley* (*Rising and Ravenscroft*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] **[2 W.L.R. 419**

ARBITRATION: TRADE CUSTOM THAT UMPIRE SHOULD REMAIN WITH APPEAL BOARD IN ABSENCE OF PARTIES

London Export Corporation, Ltd. *v.* Jubilee Coffee Roasting Co., Ltd.

Diplock, J. 10th February, 1958

Motion.

A contract for the sale of ground nuts incorporated all the terms, conditions and rules of Contract Form No. 75 of the Incorporated Oil Seed Association [I.O.S.A.], which contract contained a clause providing for arbitration according to the rules appended thereto. By those rules, "Any dispute arising out of a contract embodying these rules shall be referred to arbitration in London, each party appointing one arbitrator . . . and such arbitrators shall have the power if and when they disagree to appoint an umpire," both arbitrators and umpire to "be a member of the association, or a partner in a member's firm, or a director of a company represented by a member." The rules also gave the right of appeal to a board of appeal consisting of four members of the association's committee of appeal and provided that "No member of the committee of appeal who has an interest in the matter in dispute, or who has acted as arbitrator or umpire in the case and no member of the same firm or company to which either of the arbitrators or the umpire shall belong, shall vote on the question of the appointment of members of the board of appeal or shall be appointed a member of the board of appeal." A dispute between the parties to a contract was referred to arbitration and an umpire was appointed in accordance with the rules. The umpire awarded in favour of the sellers and the buyers appealed to the board of appeal. Throughout the hearing by the board of appeal the umpire was present and at the conclusion of the hearing, at the request of the chairman and after protest by the buyers, he remained with the board. It was the customary practice in I.O.S.A. arbitrations, and had been so for about fifty years, for the umpire to remain with the board of appeal in the absence of the parties. After the parties had retired the chairman asked the umpire if the evidence and contentions put before the board differed from those before him; the umpire replied "no," and volunteered the information that he had taken a certain view of the contract. The board of appeal upheld the umpire's award. The buyers sought to have the award set aside on the ground that the board of appeal had misconducted themselves in asking the umpire to remain and communicating with him in the absence of the parties.

DIPLOCK, J., reading his judgment, said that it was established that it was misconduct for an arbitrator to hear evidence or receive argument on behalf of one party in the absence of the other, or rather the court would not imply a term permitting him to do so, and that rule applied to argument or evidence given by a disinterested stranger. But by agreeing to arbitration by arbitrators and umpires who must be members of the I.O.S.A. with an appeal to a board of appeal also members of the committee of appeal of the I.O.S.A., there must be taken to be incorporated in the arbitration agreement an agreement to accept the customary procedure of the I.O.S.A. except in so far as it was unreasonable or conflicted with the written terms of the agreement. His lordship would hesitate to condemn a practice which had commended itself to commercial men versed in the trade for fifty years, and the practice of allowing the appeal board to consult the umpire in the absence of the parties was not so unreasonable, as opposed to unusual, as to exclude in principle its incorporation in the arbitration agreement. Its adoption, therefore, afforded no ground for setting aside the award on the grounds of public policy as contrary to the rules of natural justice. But a custom or trade practice might be excluded by the express terms of the contract or by necessary implication from those terms and the parties had made it clear not only that the umpire was not to be a member of the board of appeal but that he was to have no voice even in the selection of the board. By r. 6 the decision of an appeal was expressly confided to a board appointed in the manner therein set out. The umpire was to be a stranger to the decision of the board, and the necessary implication was that he was to have no influence, direct or indirect, upon the board in reaching its decision and that the board had no right to seek any information from him in the absence of the parties or to allow him to attend their deliberations after the conclusion of the hearing. If they did so, it was contrary to the implied terms of the arbitration agreement, and therefore the award must be set aside and the matter remitted to a differently constituted appeal board. Order accordingly.

APPEARANCES: *H. Fisher* (*Coward, Chance & Co.*); *John Donaldson* (*Gaster & Turner*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 271**

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: PROXY MARRIAGE: HUSBAND DOMICILED IN ENGLAND: HOME TO BE IN ENGLAND: NULLITY: WILFUL REFUSAL: LAW APPLICABLE

Ponticelli *v.* Ponticelli (otherwise Giglio) (by her Guardian)

Sachs, J. 15th January, 1958

Petition by husband for a decree of nullity on the ground that the wife had wilfully refused to consummate the marriage.

The petitioner was an Italian domiciled and resident in England who in July, 1955, married by proxy in accordance with Italian law while he personally was in England a girl at that time resident at Ostuni, in the Province of Brindisi, Italy, and domiciled in that country. The country of the intended matrimonial home was England. Both parties had been born in Ostuni, the husband (who came to England in 1952) in 1927, the wife in 1937. The husband presented a petition for nullity of marriage on the ground that the wife had wilfully refused to consummate it. The question accordingly arose which law was applicable upon the husband's plea if the proxy marriage itself were recognised in this country as a valid ceremony.

SACHS, J., said that the issues raised for decision were these: first, was there a valid marriage in Italy between the husband and wife in July, 1955; secondly, if the parties had thus been validly married, then by the law of what country did the husband's plea fall to be decided, the *lex loci contractus*, the *lex domicilii* or the *lex fori*; thirdly, if the law in question was that of this country, had wilful refusal as alleged been established? His lordship referred to the judgment of the Court of Appeal in *Apt* v. *Apt* [1948] P. 83, 88, which, he said, covered the present proxy marriage in Italy, despite the fact that the husband was domiciled in England. There were no facts to suggest that a power of attorney had been used to effect a marriage which was not at the material moment voluntary on the part of the giver of the power. The importance of the issue as to which law was applicable derived from the fact that a refusal to consummate a marriage, if established, was a ground on which a decree of nullity might be granted under s. 8 (1) of the Matrimonial Causes Act, 1950, but was not a ground for such a decree of nullity before a civil court in Italy, and was not a ground for such a decree before a consistory court there unless the intention to refuse to consummate the marriage had existed at the moment of the ceremony itself. His lordship referred to *Robert* (*otherwise de la Mare*) v. *Robert* [1947] P. 164, in which Barnard, J., had held that in such a case the *lex loci celebrationis* should be applied, and to *Way* v. *Way* [1950] P. 71, 80, in which Hodson, J., had held in a case where wilful refusal had been alleged in regard to a war-time marriage in Russia that the marriage was voidable by English law, which was the law of the matrimonial domicile, and had granted a decree. His lordship considered also *de Reneville* v. *de Reneville* [1948] P. 100, and said that he was

unable to agree with Barnard, J., that *lex loci* was the proper law applicable to the husband's plea. The choice was between *lex domicilii* and *lex fori*. As between those, *lex domicilii*, favoured by Hodson, J., was chosen as being the proper alternative by Barnard, J., in *Robert* (*otherwise de la Mare*) v. *Robert* if he was wrong as to *lex loci*, and by the fact that the judgments in *de Reneville* v. *de Reneville* clearly tended against the applicability of the *lex fori*. In support of applying the *lex domicilii*, it would be unfortunate indeed if a marriage were to be held valid or invalid according to which country's courts adjudicated on the issue—a danger all the more to be feared by reason of the provisions of s. 18 of the Matrimonial Causes Act, 1950. It was surely a matter of some importance that the initial validity of a marriage should, in relation to all matters except form, be consistently decided according to the law of one country alone: but consistency could not be attained if the test were the *lex fori*. Since, however, in the present case, the relevant proper law was either the *lex domicilii* or *lex fori*, it was not essential to come to a final conclusion as between the two: the law of this country applied in each case, as, indeed, did the law of the intended matrimonial domicile. His lordship then considered the evidence, upon which he found that the wife had been unswerving in her denial of an opportunity to the husband to consummate the marriage, and that the husband was accordingly entitled to a decree of nullity. Decree *nisi*.

APPEARANCES: *George Dobry* (*Leader, Henderson & Leader*); *Roger Ormrod* and *Holroyd Pearce* (*The Official Solicitor* as guardian *ad litem*).

[Reported by JOHN B. GARDNER Esq., Barrister-at-Law] **[2 W.L.R. 439**

Court of Criminal Appeal

CRIMINAL LAW: BANKRUPTCY: CONTRIBUTION TO INSOLVENCY BY GAMBLING

R. *v.* Vaccari

Cassels, Streatfeild and Slade, JJ. 10th February, 1958

Appeal against conviction.

The appellant, a café proprietor who owed income tax amounting to £7,000, was adjudicated bankrupt on the petition of the Inland Revenue. He was subsequently prosecuted for contributing to his insolvency by gambling contrary to s. 157 (1) of the Bankruptcy Act, 1914. At the trial it was not disputed that the appellant had lost some £6,000 by gambling in the two years prior to the date when the receiving order was made, but it was submitted on his behalf that an income tax liability was not a debt contracted "in the course and for the purpose of . . . trade or business" as set out in s. 157 (1), and that he had accordingly committed no offence within the section. The deputy chairman of County of London Sessions before whom he appeared ruled that income tax was a debt within the section, and directed the jury accordingly. The appellant was convicted. He appealed against conviction by certificate of the deputy chairman.

CASSELS, J., said that the whole case turned on the debt to the Inland Revenue. Having decided the question of law as he did, the deputy chairman left to the jury the question whether the appellant had increased his insolvency by gambling, and the jury did not have much difficulty in arriving at the conclusion that he had done so. But was a debt due to the Inland Revenue a debt contracted in the course and for the purposes of such trade or business? Counsel for the Crown had found that he was unable to argue that it was in the light of the authorities cited. Those authorities established that income tax was a liability due directly to the Crown which was calculated on the profits or gains in the course of a business, but which had nothing to do with the actual business in the way of a trade debt. As it was not a trade debt, but a statutory liability, it could not possibly be held to come within the four corners of the words of s. 157 (1) of the statute. The fact that a taxpayer could delay payment of his just dues to the tax collector, gamble as much as he liked, and so diminish his estate by gambling, and yet not come within the mischief of s. 157 (1) if made bankrupt, was not a matter for the court. It was a matter for Parliament. The court had to interpret the law as they found it, and the Bankruptcy Act, 1914, was applicable, and only applicable, to a man's trade or business, and a debt which was contracted in the course and for the purpose of such trade or business. Therefore the conviction must be quashed.

APPEARANCES: *Victor Durand* (*Hardcastle, Sanders and Armitage*); *S. A. Morton* and *Patrick Whelon* (*Director of Public Prosecutions*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] **[1 W.L.R. 297**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time:—

Commonwealth Institute Bill [H.C.] [27th February.

Water Bill [H.L.] [27th February.

Read Third Time:—

Housing (Financial Provisions) Bill [H.L.] [25th February.

Overseas Resources Development Bill [H.C.] [27th February.

Overseas Service Bill [H.C.] [27th February.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Disabled Persons (Employment) Bill [H.C.] [26th February.

To amend the law relating to disabled persons as regards the minimum age for attendance at certain courses under the Disabled Persons (Employment) Act, 1944, as regards registration under that Act and as regards the provision by local authorities of employment or other work under special conditions.

Immigration and Passports Bill [H.C.] [26th February.

To provide that any British subject or British protected person who is deemed or declared to be a prohibited immigrant in any British colony, protectorate, United Kingdom mandated territory or United Kingdom trust territory, or who, being resident in any such colony, protectorate or territory, is refused a passport, may appeal against such decision or refusal to an advisory committee set up to advise the Secretary of State for the Colonies.

National Health Service Contributions Bill [H.C.] [27th February.

To increase the rates of national health service contributions, and for purposes connected therewith.

Road Traffic (Parking of Vehicles in Residential Areas) Bill [H.C.] [25th February.

To regulate the parking of vehicles in the highway in residential areas; and for purposes connected therewith.

Read Second Time:—

British Transport Commission Bill [H.C.] [25th February.

Essex County Council Bill [H.C.] [24th February.

B. QUESTIONS

DIPLOMATIC IMMUNITY

Commander NOBLE made the following statement:—

A total of 3,090 persons, including 898 wives, are at present officially regarded as entitled to claim diplomatic immunity in the United Kingdom as Heads of foreign diplomatic missions accredited to the Court of St. James's or members of their respective staffs.

In addition, 511 persons, including 111 wives, being members of the staffs of foreign diplomatic missions, enjoy immunity of a restricted kind under the provisions of the Diplomatic Immunities Restriction Act, 1955 (4 Eliz. 2, Ch. 21).

Immunities of the kind prescribed in the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952 (15 & 16 Geo. 6 and 1 Eliz. 2, Ch. 18), are also enjoyed by 2,633 persons, including 869 wives, as High Commissioners of Commonwealth countries in London and the Ambassador of the Republic of Ireland or members of their respective staffs.

A like immunity from suit and legal process as is accorded to the head of a foreign diplomatic mission is currently enjoyed in the United Kingdom by the Secretary-General and deputy Secretary-General of Western European Union, upon whom it has been conferred by Order in Council made under the International Organisations (Immunities and Privileges) Act, 1950 (14 Geo. 6, Ch. 14): and by the Chief Representative in the United Kingdom of the High Authority of the European Coal and Steel Community, in accordance with the provisions of the European Coal and Steel Community Act, 1955 (4 Eliz. 2, Ch. 4).

Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties is at present enjoyed in the United Kingdom by 132 officials of international organisations and by seven members of the staff of the Delegation of the European Coal and Steel Community.

[21st February.

Injured Workmen (Awards of Fines)

Mr. Carr said that the main purpose of s. 133 of the Factories Act, 1937 (which provided for the payment to injured workmen of fines imposed as a result of prosecutions), in modern conditions was to enable the courts to impose a more severe penalty for the breach of the law which had resulted in the injury. The aspect of compensation to the workman was much less important in view of changes in the law as to industrial injuries benefits and civil damages.

[26th February.

Highways Enactments (Draft Bill and Committee)

Mr. Watkinson made the following statement:—

A draft Bill has been prepared which will be examined by a Committee which the Minister of Housing and Local Government and Minister for Welsh Affairs and I have set up with the following terms of reference:—

> "To examine, with a view to consolidation, the public general enactments relating to highways, streets and bridges in England and Wales, other than enactments designed to regulate traffic or applying exclusively to London; to consider which of the enactments should be consolidated and what amendments not of substantial importance (including consequential amendments of the common law and the general enactment of non-controversial provisions commonly found in local Acts) are desirable, in connection with the consolidation, either to improve the form of the law or for the removal of anomalies, inconsistencies and ambiguities, for abrogating provisions which are obsolete or otherwise unnecessary or for modernising procedure; and to report whether in the opinion of the Committee the draft Bill submitted to them, either as submitted or with such alterations as they think fit to suggest, satisfactorily achieves such a consolidation and embodies no amendment of the law of such importance that it ought to be separately enacted."

I am glad to say that the Most Hon. the Marquess of Reading, G.C.M.G., C.B.E., M.C., T.D., Q.C., has agreed to act as Chairman.

The other members are:—

The hon. Member for Buckinghamshire South (Mr. Ronald M. Bell).

The hon. Member for Liverpool, Edge Hill (Mr. Arthur J. Irvine).

Mr. J. G. Barr, Solicitor and Parliamentary Officer, London County Council.

Mr. P. C. Davie, City Remembrancer, Corporation of London.

Mrs. E. A. Eadie, A Deputy Counsel, Office of the Parliamentary Counsel to the Treasury.

Mr. T. H. Evans, C.B.E., Clerk of the Staffordshire County Council, representing the County Councils Association.

Mr. H. S. Haslam, Secretary, Urban District Councils Association.

Mr. B. Honour, C.B., M.C., Head of Highway Law Consolidation Branch, Ministry of Transport and Civil Aviation.

Mr. V. J. Lewis, An Assistant Solicitor, Ministry of Housing and Local Government.

Mr. Reep Lintern, An Under Secretary, Ministry of Transport and Civil Aviation.

Mr. R. H. McCall, Town Clerk, Winchester, representing the Association of Municipal Corporations.

Mr. J. J. McIntyre, C.B.E., Secretary, Rural District Councils Association.

Mr. A. N. Schofield, Town Clerk, Southampton, representing the Association of Municipal Corporations.

Mr. C. F. Thatcher, Town Clerk, Fulham, representing the Metropolitan Boroughs Standing Joint Committee.

Mr. J. A. Turner, O.B.E., Clerk of the Northamptonshire County Council, representing the County Councils Association.

The Secretary of the Committee is Mr. S. Emm, M.B.E., of the Ministry of Transport and Civil Aviation, 21–37 Hereford Road, London, W.2, and the Assistant Secretary is Mr. G. C. Davies of the Ministry of Housing and Local Government.

[26th February.

STATUTORY INSTRUMENTS

Bath–Cheltenham–Evesham–Coventry–Leicester–Lincoln Trunk Road (Narborough Road South) Order, 1958. (S.I. 1958 No. 266.) 5d.

British Protectorates, Protected States and Protected Persons (Amendment) Order in Council, 1958. (S.I. 1958 No. 259.) 5d.

Cinematograph Films (Distribution of Levy) (Amendment) Regulations, 1958. (S.I. 1958 No. 270.) 5d.

Colonial Air Navigation (Amendment) Order, 1958. (S.I. 1958 No. 258.) 5d.

Coroners (Fees and Allowances) Rules, 1958. (S.I. 1958 No. 285.) 4d.

County of Cornwall (Electoral Divisions) Order, 1958. (S.I. 1958 No. 283.) 5d.

County of Glamorgan (Electoral Divisions) Order, 1958. (S.I. 1958 No. 253.) 5d.

County of Nottingham (Electoral Divisions) Order, 1958. (S.I. 1958 No. 284.) 5d.

Exchange Control (Import and Export) Order, 1958. (S.I. 1958 No. 299.) 5d.

Foreign Compensation (Bulgaria) Order, 1958. (S.I. 1958 No. 261.) 8d.

Foreign Service Fees (Amendment No. 5) Order, 1958. (S.I. 1958 No. 262.) 5d.

Irvine and District Water Board (River Garnock) Water Order, 1958. (S.I. 1958 No. 274 (S. 13).) 5d.

Isles of Scilly (Local Government) Order, 1958. (S.I. 1958 No. 286.) 4d.

Metropolitan Police Staffs Superannuation Order, 1958. (S.I. 1958 No. 238.) 5d.

Nigeria (Acting Federal Justices) Order in Council, 1958. (S.I. 1958 No. 260.) 4d.

Nurses (Regional Nurse-Training Committees) (Scotland) Amendment Order, 1958. (S.I. 1958 No. 275 (S. 14).) 5d.

Patents, etc. (Federation of Rhodesia and Nyasaland) (Convention) Order, 1958. (S.I. 1958 No. 263.) 4d.

Penrith–Middlesbrough Trunk Road (Stockton and Thornaby Southern By-Pass) Order, 1958. (S.I. 1958 No. 268.) 8d.

Petroleum (Carbon Disulphide) Order, 1958. (S.I. 1958 No. 257.) 5d.

Rawmarsh (Water Charges) Order, 1958. (S.I. 1958 No. 251.) 4d.

Retention of a Cable and a Main Under a Highway (County of Nottingham) (No. 1) Order, 1958. (S.I. 1958 No. 237.) 5d.

Retention of Pipe Under Highway (County of West Suffolk) (No. 1) Order, 1958. (S.I. 1958 No. 236.) 5d.

Ripon Water Order, 1958. (S.I. 1958 No. 252.) 5d.

Sea-Fishing Industry (Fishing Nets) (Amendment) Order, 1958. (S.I. 1958 No. 279.) 5d.

Silo Subsidies (Variation) (England and Wales and Northern Ireland) Scheme, 1958. (S.I. 1958 No. 280.) 5d.

Stopping up of Highways (County of Durham) (No. 4) Order, 1958. (S.I. 1958 No. 232.) 5d.

Stopping up of Highways (County of Glamorgan) (No. 1) Order, 1958. (S.I. 1958 No. 245.) 5d.

Stopping up of Highways (County of Gloucester) (No. 4) Order, 1958. (S.I. 1958 No. 233.) 5d.

Stopping up of Highways (County Borough of Great Yarmouth) (No. 1) Order, 1958. (S.I. 1958 No. 267.) 5d.

Stopping up of Highways (County of Hertford) (No. 4) Order, 1958. (S.I. 1958 No. 221.) 5d.

Stopping up of Highways (County of Huntingdon) (No. 1) Order, 1958. (S.I. 1958 No. 265.) 5d.

Stopping up of Highways (County of Kent) (No. 4) Order, 1958. (S.I. 1958 No. 241.) 5d.

Stopping up of Highways (County of Leicester) (No. 3) Order, 1958. (S.I. 1958 No. 234.) 5d.

Stopping up of Highways (County of Montgomery) (No. 1) Order, 1958. (S.I. 1958 No. 246.) 5d.

Stopping up of Highways (County of Northampton) (No. 2) Order, 1958. (S.I. 1958 No. 235.) 5d.

Stopping up of Highways (County of Southampton) (No. 5) Order, 1958. (S.I. 1958 No. 222.) 5d.

Stopping up of Highways (County of Surrey) (No. 1) Order, 1958. (S.I. 1958 No. 247.) 5d.

Stopping up of Highways (County of Sussex, East) (No. 1) Order, 1958. (S.I. 1958 No. 242.) 5d.

Stopping up of Highways (County of York, North Riding) (No. 2) Order, 1958. (S.I. 1958 No. 243.) 5d.

Stopping up of Highways (County of York, North Riding) (No. 3) Order, 1958. (S.I. 1958 No. 244.) 5d.

Suffolk and Ipswich Fire Services (Combination) Order, 1958. (S.I. 1958 No. 276.) 5d.

Thanet Water Board (Charges) Order, 1958. (S.I. 1958 No. 264.) 4d.

Treasury (Loans to local authorities) (Interest) Minute, 1958. (S.I. 1958 No. 289.) 5d.

Treasury (Loans to persons other than local authorities) (Interest) Minute, 1958. (S.I. 1958 No. 290.) 5d.

Wallasey Water Order, 1958. (S.I. 1958 No. 271.) 5d.

Wild Birds (Low Parks Sanctuary, Hamilton) Order, 1958. (S.I. 1958 No. 281 (S. 15).) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. Prices stated are inclusive of postage.]

NOTICE—ALTERATIONS IN COURT FEES AND FIXED COSTS

Court Fees

Attention is drawn to certain amendments to court fees pursuant to the Supreme Court Fees (Amendment) Order, 1958 (S.I. 1958 No. 160 (L. 3)). This Order comes into operation on 1st March, 1958, and applies only to proceedings commenced on or after that date.

Included in these amendments are the following :—

(1) The fee on issuing a writ of summons is increased from £2 to £3 where the claim is solely for a liquidated sum not exceeding £100, and to £4 in all other cases.

(2) The fee on signing a judgment in default of appearance or of defence, or pursuant to an order under Order XIV is abolished.

(3) The fee on issuing an originating summons to which no appearance is required is increased from 10s. to £2 (with an exception in certain matrimonial causes).

Fixed Costs

As an interim measure until such time as Appendix P is amended, the following alterations will be made in proceedings to which the above Order applies, in the amounts indicated in the Scale of Fixed Costs issued by the Senior Master dated 1st September, 1956, as amended on 18th February, 1957* :—

Four-Day Costs

Where the amount claimed is £40 and over but less than £75 (one defendant) :—

	£ s. d.	£ s. d.
Town cases increased from	4 8 0	to 5 8 0
Country cases increased from	4 18 0	to 5 18 0

Where the amount claimed is £75 and over but less than £300 (one defendant) :—

	£ s. d.	£ s. d.
Town cases increased from	6 10 0	to 7 10 0
Country cases increased from	7 0 0	to 8 0 0

Where the amount claimed is £300 and over (one defendant) :—

	£ s. d.	£ s. d.
Town cases increased from	6 10 0	to 8 10 0
Country cases increased from	7 0 0	to 9 0 0

Judgment in Default of Appearance or of Defence

Where £300 or over is recovered :—

	£ s. d.	£ s. d.
Town cases increased from	9 0 0	to 10 0 0
Country cases increased from	10 0 0	to 11 0 0

Judgment under Order XIV

Where £300 or over is recovered :—

	£ s. d.	£ s. d.
Town cases increased from	12 15 0	to 14 5 0
Country cases increased from	13 10 0	to 15 5 0

Judgment on Discontinuance or on Acceptance of Money Paid into Court

	£ s. d.	£ s. d.
Costs on signing Judgment decreased from	1 7 0	to 0 17 0

All other amounts in the Scale of Fixed Costs remain unaltered.

R. F. Burnand,
Senior Master of the Supreme Court.

24th February, 1958.

* See 100 Sol. J. 669, 670 and 101 Sol. J. 206.

SOCIETIES

Sir Edmund Davies was the guest of honour at the annual dinner of the Shropshire Law Society held at the Raven Hotel, Shrewsbury, on 25th February. Lt.-Col. H. H. Lanyon, president of the society, was in the chair.

Mr. David Harris proposed the toast of "The Bench and the Bar" and Mr. J. N. Rushton proposed "The Visitors."

At the annual general meeting of the Hastings and District Law Society held on 26th February, the following officers were elected—president : Mr. L. A. Edgar ; vice-president : Mr. R. T. H. Perkins ; hon. treasurer : Mr. A. W. K. Brackett ; hon. librarian : Mr. E. Willings ; and hon. secretary : Mr. M. C. S. Langdon.

On 11th February a Joint Moot was held at University College London between the Bentham Club and the University College London Law Society, and was presided over by Sir Gerald Slade. Mr. T. Glanville Jones, Barrister-at-Law, and Mr. M. A. Gregory, Barrister-at-Law, represented the Bentham Club. Mr. R. M. Raybould and Mr. J. Payne appeared on behalf of the students.

The annual general meeting and dinner were held at University College London on 26th February, 1958. Sir Edwin Herbert delivered his presidential address on "Education for the Legal Profession."

Graduates interested in joining the club are requested to communicate with the Hon. Secretary, The Bentham Club, c/o Faculty of Laws, University College London, Gower Street, London, W.C.1.

NOTES AND NEWS

Honours and Appointments

Mr. A. D. FARRELL, Solicitor-General, the Federation of Malaya, has been appointed a Puisne Judge, Kenya.

Mr. ROBERT PEREDUR HUGHES, solicitor, of Holyhead, Anglesey, has been appointed clerk of the Commissioners of Taxes for the Bodedern district of Anglesey in succession to his partner, Mr. Hugh Jenkins, who has resigned that post.

Mr. IAN S. MANSON, prosecuting solicitor at Southampton, has been appointed prosecuting solicitor at Portsmouth.

The Rt. Hon. LORD NATHAN, solicitor, of London Wall, E.C.2, has been elected president of the Association of Technical Institutions in succession to Sir David Lindsay Keir.

Mr. J. WICKS, District Judge, Hong Kong, has been appointed a Puisne Judge, Kenya.

Personal Notes

Dr. William George, solicitor, of Portmadoc, Barmouth and Pwllheli, has recently celebrated his ninety-third birthday. He marked the occasion with the announcement that he has completed a book which will throw new sidelights on the life and character of his brother, the late Earl Lloyd George.

Mr. E. A. Stevens, solicitor, has retired as County Court Registrar for the Hastings, Lewes and Eastbourne area after seventeen years in that post.

Miscellaneous

MONOPOLIES AND RESTRICTIVE PRACTICES ACTS

The Board of Trade's annual report on the operation of the Monopolies and Restrictive Practices Acts, 1948 and 1953, has been published by H.M. Stationery Office (price 6d., by post 8d.) This report includes a summary of the work and expenditure of the Monopolies Commission during 1957.

DEVELOPMENT PLANS

BERKSHIRE COUNTY COUNCIL DEVELOPMENT PLAN

WOODLEY AND EARLEY TOWN MAP

Proposals for alterations or additions to the above development plan were on 20th February, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land in the Wokingham Rural District, comprising parts of the civil parishes of Woodley and Sandford, Earley, Sonning Town, St. Nicholas Hurst, Winnersh and Shinfield. Certified copies of the proposals as submitted have been deposited for public inspection at the places mentioned below. The copies of the proposals so deposited together with copies of the plan are available for inspection free of charge by all persons interested, between the hours indicated. *Places of Deposit:* The Office of the Clerk of the County Council, Shire Hall, Reading. The Office of the County Planning Officer, 6–7 Abbot's Walk, Reading. Wokingham Rural District Council Offices, Shute End, Wokingham. *Hours for Inspection:* 9.30 a.m.–5 p.m. Monday to Friday; 9.30 a.m.–12 noon Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 7th April, 1958, and any such objection or representation should state the grounds on which it is made. Persons making any objection or representation may register their names and addresses with the Berkshire County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

WEST SUFFOLK COUNTY DEVELOPMENT PLAN

On 18th December, 1957, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan as amended by the Minister has been deposited at the Shire Hall, Bury St. Edmunds, and a certified copy of the plan as amended so far as the amendment relates to the Urban District of Haverhill has also been deposited at the offices of the Urban District Council, Haverhill. The copies of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 10.30 a.m. and 4 p.m. on Mondays to Fridays inclusive and 10.30 a.m. to 12 noon on Saturdays. The amendment became operative as from 25th February, 1958, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 25th February, 1958, make application to the High Court.

THE SOLICITORS ACT, 1957

On 12th February, 1958, the practising certificate of WINSTON FISHER, of 23 Dane Avenue, Barrow-in-Furness, in the County of Lancaster, was suspended by virtue of the fact that he was adjudicated bankrupt on the 12th February, 1958.

On 17th February, 1958, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that the name of ANDREW THOMAS CUTTS, formerly of No. 8 Knighton Chambers, Aldwick Road, Bognor Regis, Sussex, and now of 4 Nelson Road, Bognor Regis, Sussex, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

ROYAL COMMISSION ON LOCAL GOVERNMENT IN GREATER LONDON

The Royal Commission on Local Government in Greater London have written to all the local authorities in the area, explaining how the commission propose to begin their investigations and inviting the local authorities to submit evidence. The letter states that the commission wish first of all to see how the present arrangements are working in some of the main local authority functions such as education, environmental health services, housing, personal health and welfare services, town and country planning, and traffic. The commission are also prepared to receive evidence from members of the public. Any person who wishes to do so should send his evidence in writing to the secretary of the commission, Mr. J. R. Niven, at Sanctuary Buildings, 16 Great Smith Street, London, S.W.1.

A lecture will be given in the Old Hall, Lincoln's Inn, London, W.C.2, on 11th March, by Mr. Owen Swingland on "Estate Duty and the Private Company," under the auspices of the Solicitors' Managing Clerks' Association. Tickets are available at the offices of the association, Maltravers House, Arundel Street, Strand, London, W.C.2.

OBITUARY

MR. R. COHEN

Mr. Reuben Cohen, for many years registrar of county courts at Middlesbrough, Stockton, Guisborough, Stokesley, and West Hartlepool, died on 19th February, aged 77. He was deputy chairman of Durham Quarter Sessions from 1940 to 1955.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).